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Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930.

No. 513

STATE OF ALABAMA AND ALABAMA PUBLIC SERVICE COMMISSION, APPELLANTS,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ATLANTIC COAST LINE RAILROAD COMPANY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA

FILED OCTOBER 15, 1930

(35,435)

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VOL. I

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IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION, HOLDING SESSIONS AT BIRMINGHAM

In Equity. No. 613

STATE OF ALABAMA and ALABAMA PUBLIC SERVICE COMMISSION

v.

UNITED STATES et al.

BILL OF COMPLAINT AND ORDER THEREON

To the Honorable the Judges of the District Court of the United States for the Northern Distrıct of Alabama, Southern Division:

The petition of the State of Alabama and Alabama Public Service Commission, complaining of the United States, Atlantic Coast Line Railroad Company, Seaboard Air Line Railway Company, Southern Railway Company, The Alabama Great Southern Railroad Company, Atlanta, Birmingham and Coast Railroad Company, successor to Atlanta, Birmingham & Atlantic Railway Company (B. L. Bugg, Receiver), Central of Georgia Railway Company, Louisville and Nashville Railroad Company, Mobile and Ohio Rail Road Company, The Nashville, Chattanooga & St. Louis Railway, Northern Alabama Railway Company, St. Louis-San Francisco Railway Company, Illinois Central Railroad Company, and The Western Railway of Alabama, respectfully shows:

1

Petitioner, the State of Alabama, is a State of the United States, and Petitioner, Alabama Public Service Commission, is a Commission created under the laws of the State of Alabama, with the duty of regulating rates over common carrier railroads operating in Alabama, and of enforcing

such regulations in courts or elsewhere. The Alabama Public Service Commission was made a party respondent [fol. 2] to the complaint to the Interstate Commerce Commission on which the order here sought to be set aside was entered.

2

The defendants, the Alabama Great Southern Railroad Company and the Northern Alabama Railway Company, are corporations duly incorporated under the laws of the State of Alabama, with their residence in the Northern District and Southern Division of the United States District Court and engaged in the transportation of commodities intrastate within the State of Alabama. The Atlantic Coast Line Railroad Company is a corporation and resident of Alabama, and of Virginia; and Mobile and Ohio Railroad Company is incorporated by and a resident of Alabama, Mississippi, Tennessee and Kentucky; The Western Railway of Alabama is a corporation and resident of Alabama. The other railroad companies, defendants, are corporations, all corporations of states other than the State of Alabama, but each of said defendants, those incorporated in the State of Alabama and elsewhere, is engaged in transporting commodities of various kinds between points in the State of Alabama, and all of said defendants are engaged in business in Alabama and have agencies in said state on whom service may be had.

3

This is a suit brought to set aside orders of the Interstate Commerce Commission and to enjoin the railroads, defendants, from seeking to file and make effective tariffs in accordance with such orders. The orders complained of grew out of a proceeding before the Interstate Commerce Commission, entitled "Fertilizer and Fertilizer Materials between Southern Points," numbered as Docket 16295, and including in such Docket other Dockets, including one numbered 16336. On July 19, 1926, the Interstate Commerce Commission filed its decision, findings of fact, and report in said consolidated dockets, all of which are of record in the reports of the Interstate Commerce Commission in Vol-

ume 113, beginning at page 389, and in 123 I. C. C., 193, and 129 I. C. C. 215, and all of said report material to an understanding of this case is set out in an exhibit hereto, marked [fol. 3] "Exhibit A," to which reference here and hereafter is prayed as often as may be necessary. In said proceeding, and on the 5th day of July, 1927, the Interstate Commerce Commission made a supplemental report, a copy of the order in which is attached hereto, marked "Exhibit B," and reference thereto prayed as often as may be necessary. In said proceeding, and on the 3rd day of October, 1927, the Interstate Commerce Commission issued an order in Docket 16336, a part of said consolidated hearing, in which order there was a general condemnation of the intrastate rates of the State of Alabama on fertilizers and fertilizer materials, both carload and less than carload. Said order of October 3, 1927, is the order herein sought to be set aside and a full copy thereof is attached hereto, marked "Exhibit C," and reference thereto prayed as often as may be necessary. Each and all of the foregoing described exhibits and the reports of the Interstate Commerce Commission are made part of this petition and are not further copied herein.

4

Jurisdiction of this court depends upon subdivision 28 of section 41, and sections 43, and 45 to 48, inclusive, of Title 28 of the United States Code, which provide for actions to enjoin, set aside, annul, or suspend, in whole or in part, any order of the Interstate Commerce Commission, and the jurisdiction of said court depends upon the fact that this action arises under the Constitution and laws of the United States, and is brought to set aside an order of the Interstate Commerce Commission.

5

Heretofore, on the 21st day of September, 1921, plaintiff Alabama Public Service Commission instituted an investigation into the reasonableness of freight rates on all commodities moving between points in the State of Alabama, to which investigation the defendants hereto, other than the United States, were respondents; that among the commodities, the rates on which were investigated in said

proceeding, were fertilizers and fertilizer materials, both carload and less than carload. On the 26th day of May, 1924, after full hearing and argument, the Alabama Public [fol. 4] Service Commission prescribed as just and reasonable charges two scales of mileage rates applicable on carload movements of fertilizers and fertilizer materials to be applied intrastate over standard lines within the State of Alabama. A copy of said scales is attached hereto, marked "Exhibit D," and made a part hereof, and reference thereto prayed as often as may be necessary. In the same order rates were prescribed on fertilizer and fertilizer materials moving in less than carload quantities, 120 per cent of the carload rates.

6

Thereafter, and on or about the 30th day of July, 1924, the defendants herein, other than the United States, brought their complaint before the Interstate Commerce Commission, in which the rates so established by the Alabama Public Service Commission were attacked, and in which complaint, after reciting certain applicable facts, the ground of attack was stated in paragraph 13 thereof, as follows:

"Petitioners aver that the rates prescribed by the Alabama Public Service Commission, in its said order of May 26, 1924, on fertilizers and fertilizer materials, and articles taking the same rates, in carloads, for intrastate application between points in the State of Alabama, and now in effect, give an undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate commerce in Alabama on the one hand, and persons and localities in interstate commerce on the other hand, and are unjustly discriminatory against interstate commerce, in violation of Section 3 and subdivisions 3 and 4 of Section 13 of the Interstate Commerce Act as amended by Section 416 of the Transportation Act of 1920.

"Petitioners further show that if the said rates on fertilizers and fertilizer materials, and articles taking the same rates, so established by the Alabama Public Service Commission, are allowed to remain in effect, the purpose of the Interstate Commerce Act will be defeated and the result will be an undue and unreasonable advantage, preference

or prejudice between person and localities in interstate com-
[fol. 5] merce, on the one hand, and intrastate commerce
on the other, and that the interstate commerce will be un-
duly, unreasonably and unjustly discriminated against; all
of which is forbidden and declared to be unlawful by the
Interstate Commerce Act."

7

Thereafter, the Interstate Commerce Commission, on the 14th day of October, 1924, giving consideration to said complaint of the defendants other than the United States, and reciting facts of the complaint, ordered:

"(1). That an investigation be, and it is hereby instituted to determine whether the rates on fertilizers and fertilizer materials required by the Alabama Public Service Commission to be maintained by said railroads, cause or will cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce or foreign commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce; and as to what rates, if any, or what maximum or minimum, or maximum and minimum shall be prescribed to be charged by the petitioners, in order to remove such advantage, preference, prejudice or discrimination, if any, as may be found to exist;

"(2). That all railroads subject to our jurisdiction operating within said State of Alabama be, and they are hereby, made respondents to this proceeding, and that a copy of this order be served upon each of such respondents, and that the State of Alabama be notified of this proceeding by sending copies of this order, and of said petition, by registered mail, addressed to the Governor of the State of Alabama, at Montgomery, Alabama, and to the Alabama Public Service Commission at Montgomery, Ala.

"(3). That notice of this proceeding be given to the public by depositing a copy of this order in the office of the Secretary of the Commission, at Washington, D. C."

8

By the complaint of the defendants other than the United States, and by the order of the Interstate Commerce Com-

[fol. 6] mission of October 14, 1924, there was put in issue the question of whether or not certain intrastate rates in Alabama, referred to in the complaint of said defendants, in their relation to interstate rates, violated section 3 of the Acts to regulate commerce, and this issue was limited to the specific rates complained of in said complaint.

9

The complaint aforesaid, of the defendants other than the United States, was numbered on the docket of the Interstate Commerce Commission as Docket No. 16336, and about the time said complaint was filed, similar complaints relating to other states were filed and the Interstate Commerce Commission combined said complaints and ordered a general investigation, which general investigation included Docket No. 16295, entitled "Fertilizers and Fertilizer Materials between Southern Points," and Docket No. 16335, referring to intrastate rates in the State of South Carolina, and Docket No. 16484, referring to intrastate rates in the State of Georgia. There was also set down at the same time and in the consolidated investigation certain fourth section applications.

10

A general investigation was ordered by the Interstate Commerce Commission on the 7th day of October, 1924, and constituted an inquiry—

"into and concerning said interstate rates on fertilizers, ferilizer compounds, and fertilizer materials and the charges resulting therefrom * * * with a view to determining whether said rates and charges are unreasonable or are unduly prejudicial to or unduly preferential of particular localities or persons and to making such order or orders as may be proper in the premises."

By such consolidated investigation, interstate rates in Southern territory generally became involved and some portion of the intrastate rates in Alabama were attacked, as abovesaid, on the ground that they were in violation of section 3 of the Acts to Regulate Commerce.

[fol. 7] 11

Subsequently, hearings were had before the Interstate Commerce Commission and a large amount of testimony taken. The general purport of the testimony was the introduction of various scales of rates in force over different railway lines and in different sections. The only evidence relating to the alleged violations of section 3 by the rates of the State of Alabama was evidence giving the measure of rates in different territories on different lines of railway, and of rates in other proceedings fixed or approved by the Interstate Commerce Commission, and evidence as to the number, location, and general manufacturing capacity of fertilizer factories and mixing plants in the State of Alabama; and evidence that, generally speaking, fertilizer manufacturers were in competition, the one with the other. All the evidence presented to the Interstate Commerce Commission in said consolidated hearings had reference to a different rate level between movements over a single line and movements over two or more lines of railroad. Shippers presented testimony seeking to establish the reasonableness of rate scales, one for each of the two classes of lines, and the carriers likewise submitted such scales. There was no evidence and no contention that there should be a single scale applicable both to single line and multiple line hauls.

12

In stating the issues involved in said general investigation, and specifically in stating the issues with relation to intrastate rates, the Interstate Commerce Commission found in its report and stated the issue to be: "And the intrastate rates which have been enforced by some of the States are attacked by the carriers as unreasonably low and it is alleged that they adversely affect manufacturers and dealers shipping into those states over interstate routes." In making this reference the Commission had under consideration the intrastate rates of Alabama as well as of other states. The report of the said Interstate Commerce Commission in said consolidated cases was entered July 19, 1926, and is reported in Volume 113 of the Reports of the Interstate Commerce Commission, begin-

ning at page 389, to which report and decision of the In-
[fol. 8] terstate Commerce Commission reference is made so far as same is pertinent to the issues of this case. The pertinent parts of said report are copied in Exhibit "A" attached hereto. The full report and supplemental reports will be shown to the coure on the hearing hereof.

13

The complaints on file, the order of investigation of the Interstate Commerce Commission, and the findings of fact of said Commission, were all based on the issue between the then interstate rates and the then intrastate rates, that being the sole issue with reference to discrimination presented to the Interstate Commerce Commission and the evidence was directed to that issue alone.

14

In the findings of the Interstate Commerce Commission, it found that rates applicable to interstate commerce in carloads of mixed fertilizers and of fertilizer materials should for the future be the rates prescribed in the single mileage scale of rates applicable both to single and multiple lines, such scale of the Interstate Commerce Commission is shown in Exhibit "A," here again referred to, and which scale differs from any scale advocated by shipper or carrier and differs from the Alabama scale; among the differences between the said scale adopted by the Interstate Commerce Commission and the scales adopted by the Alabama Public Service Commission being that the interstate scale applies to all movements, whether over one or more lines of railroad, and the Alabama scales differentiate between movements over a single line and over a multiple of lines. The interstate scale permits grouping for the "longer hauls," while the intrastate scale does not, and under the order of the Interstate Commerce Commission, there is no authority for the grouping of the shorter intrastate hauls, nevertheless the defendant carriers have published tariffs with such grouping for the shorter hauls. The Interstate Commerce Commission in its findings fixed less than carload rates at 130 per cent of the carload rates,

[fol. 9] 15

At page 435 of the report of the Interstate Commerce Commission, it makes a finding as follows:

"With respect to the intrastate cases we find:

"(1) That the maintenance of intrastate rates in Alabama on a lower basis than the corresponding rates herein found reasonable for the interstate transportation of fertilizers and fertilizer materials will for the future result in unjust discrimination against interestate commerce and in undue prejudice to persons and localities in interstate commerce."

In its finding the relationship is expressed between the rates then prescribed by the Interstate Commerce Commission and the rates then in existence intrastate in Alabama, such relationship not having been involved in any complaint and as to which no hearing was had, the issue arising by the complaints and the order of the Interstate Commerce Commission being limited to the relationship between the rates complained of and existing when the complaints were filed and the order of investigation entered.

16

In said order of investigation, and in the findings thereon, import rates were not included, although the evidence discloses that the then existing rates, which continue to exist, were made from the ports on a basis of equalization among the ports and not on any mileage scale, and the evidence further showed, and the fact still exists, that the respective manufacturers of fertilizers received their inbound freight, which entered into the total cost of transportation, on rates when the commodity was imported, that recognized a system other than mileage rates, and which inbound rates frequently and generally in combination with the outbound rates showed an equality among manufacturers, whether shipping interstate or intrastate, of total freight charges.

17

The Interstate Commerce Commission, in establishing its interstate rates in its said opinion of July 19, 1926, provided

exceptions thereto, such exceptions including, among [fol. 10] others, the following: An equalization of rates into the South from points on the Ohio River, thus disregarding the mileage basis of rates. A similar equalization from the Ohio River crossings, Cairo to Louisville, inclusive, to points in the Mississippi Valley territory, and to points in the Montgomery and Atlanta territories, and generally, the carriers were authorized to make groups of points of origin, and the Commission authorized the carriers to use groups of moderate extent and measure, and to fix the rates to and from representative points in such groups. As shown in Exhibit "B" attached hereto, the interstate rates permit deviations from mileage because of the relief there shown to be granted from the application of the Fourth Section of the Acts to Regulate Commerce, the Interstate Commerce Commission reciting that it was without evidence (123 I. C. C. 195), permits the defendant, The Nashville, Chattanooga and St. Louis Railway, a constructive mileage of 50 miles for a car-float of 20 miles on the Tennessee river in Alabama.

18

The intrastate rates in Alabama, fixed as aforesaid by the Alabama Public Service Commission for carload traffic, were based upon a minimum carload weight of 20 tons, while the interstate rates with which the said intrastate rates were contrasted, were generally on a carload minimum of 15 tons.

19

Thereafter, the defendant railroad corporations and others, being all the steam railroads operating in Alabama other than the Southern Railway, filed with the Alabama Public Service Commission a petition for authority to make effective July 1, 1927, the same rates on fertilizer and fertilizer materials for intrastate application as were found to be reasonable for interstate application in the opinions of the Interstate Commerce Commission of July 19, 1926. The Southern Railway Company and its system filed a like petition May 18, 1927. After due notice all of said petitions were fully heard, and on July 18, 1927, the Alabama Public Service Commission issued its order in Docket 4890 denying the same.

[fol. 11] 20

On or about the 1st of September, 1927, the defendants, other than the United States, and certain short line railroads located in the State of Alabama petitioned the Interstate Commerce Commission to issue an order upon its findings of July 19, 1926. No hearing was ever had on said petition, and thereafter, without hearing, the order of October 3, 1927, referred to in the next succeeding paragraph, was entered by the Interstate Commerce Commission.

21

When the Interstate Commerce Commission decided the general investigation herein referred to, on the 19th day of July, 1926, it entered its conclusions and findings, but made no order. Said conclusions and findings of the Interstate Commerce Commission were indefinite and did not find, nor did the facts justify a finding, to what extent, if at all, it was necessary to change the intrastate rates in Alabama here involved to remove any unjust discrimination against interstate commerce, if any such existed. The findings of the Interstate Commerce Commission and its subsequent orders related to all the intrastate rates of Alabama without distinguishing between those that might unjustly discriminate and those that clearly did not so discriminate. The defendants continue to maintain intrastate rates within the State of Mississippi lower than the said intrastate rates established by the Alabama Public Service Commission.

22

Thereafter, without opportunity to the Alabama Public Service Commission to be heard, and without definite findings, the Interstate Commerce Commission, on the 3rd day of October, 1927, entered its order directing the defendants herein, other than the United States, "To cease and desist on or before January 3rd, 1928, from practicing the undue prejudice, undue preference and disadvantages and unjust discrimination found in said report (said report being the opinion of July 19, 1926), to exist in the relation of interstate and intrastate rates and charges for the transportation of fertilizers and fertilizer materials within the State [fol. 12] of Alabama." The full order of the Interstate

Commerce Commission of October 3, 1927, is shown by copy thereof attached hereto and marked "Exhibit C" and reference against thereto prayed as often as may be necessary.

23

After the entry of said order of October 3, 1927, and on the 29th of November, 1927, certain named short line railroads in the State of Alabama petitioned the Interstate Commerce Commission to be included in the terms of the order of October 3, 1927. Said petition has not yet been heard or acted on, so far as complainants are advised, and none of said petitioners were parties to Docket 16336, nor to any specific complaint attacking these intrastate rates.

24

The carriers, defendants herein, have printed and filed tariffs and supplements to tariffs to become effective January 3, 1928, in which they propose to increase the intrastate rates on fertilizers and fertilizer materials within the State of Alabama to the scale prescribed for general application by the Interstate Commerce Commission on interstate transportation, and the less than carload rates on said commodities to 130 per cent of the scale for carload movements; and unless enjoined, such tariffs will become effective on said date. Such tariffs contain Note 5, which specifically makes them inapplicable in intrastate traffic in Florida, Louisiana, Mississippi, North Carolina, South Carolina and Virginia.

25

If the defendant carriers are permitted to make effective intrastate the rates included in the tariffs already filed and covered by the order of October 3, 1927, petitioners allege and believe that such rates will be unlawful, not supported by any valid order, and not supported by evidence, and contrary to evidence, and such rates will require of shippers the payment of excessive and unlawful charges, to collect which would require a multiplicity of suits and would result in irreparable damage to the shippers shipping intra- [fol. 13] state in the State of Alabama; that such order of October 3, 1927, does not cover all the railroads doing an intrastate business in the transportation of fertilizers and

fertilizer materials within the State of Alabama, and there would be confusion and unjust discrimination were such rates permitted to become effective. Such tariffs also, by excepting the State of Mississippi, unjustly discriminate against shippers intrastate in Alabama, and unduly prefer shippers intrastate in Mississippi.

26

In all the orders of the Interstate Commerce Commission in the proceedings hereinbefore referred to and in its findings and conclusions, it treated and regarded a mere difference in rates as a violation of section 3 of the Acts to Regulate Commerce and disregarded the undisputed evidence that the totality of transportation by manufacturers of fertilizers, of the rates inbound and outbound, did not unjustly prefer any manufacturer or prejudice any other manufacturer. The testimony before the Interstate Commerce Commission discloses that generally there was equality in total transportation charges among all fertilizer manufacturers; and disclosed, and it is a fact, that many of the mixing plants in the State of Alabama did not do more than mix fertilizer materials and ship them to local points, and such plants are not in competition with any manufacturer shipping fertilizers and fertilizer materials interstate into the State of Alabama, and the order and findings of the Interstate Commerce Commission fail to show to what extent, if any, it is necessary to change the intrastate rates to conform them to interstate rates.

27

In the investigation conducted by the Interstate Commerce Commission, in its opinion, findings, and conclusions, and in its orders and judgments, petitioners submit it acted arbitrarily, contrary to law, contrary to the evidence, and without any evidence to support it, in the following particulars, to-wit:

(a) In that it found that there was, under the petition of the carriers in Docket No. 16336 aforesaid, a violation of Section 3 of the Acts to Regulate Commerce as to all the [fol. 14] intrastate rates in Alabama when the most that could be said in favor of such findings is the possibility that

there is some discrimination as to certain rates along the border lines of Alabama and Georgia and of Alabama and Tennessee.

(b) In that said order there is a total lack of any finding or evidence showing that all the intrastate rates in Alabama are in competition with interstate rates, and as to the rates in Alabama near its western boundary there was no testimony showing any discrimination or competition or in any way tending to show that such rates were unlawful or in violation of section 3 of the Acts to Regulate Commerce.

(c) In that said order unduly prefers shippers in intrastate in Mississippi.

(d) In finding and prescribing a single mileage scale of rates on fertilizer and fertilizer materials applicable on single and multiple lines, when there was no issue, or contention, made by shipper or carrier in favor of such a single scale. The Interstate Commerce Commission found:

"Carriers and shippers both acquiesced in the idea that the rates should be somewhat higher for joint line than for single line hauls";

and there was no evidence with reference to the establishment of one scale applicable both to joint lines and single lines, and in establishing such scale the Interstate Commerce Commission actdd without any evidence whatsoever and without any pleadings on the part of any of the parties to the cause in favor of a single scale.

(e) In finding and adjudicating that the intrastate scales of rates in Alabama were violative of section 3 in comparison with the scale of rates fixed in the opinion of July 19, 1926, when the only issue arising in the pleadings and the evidence was the issue between the rates existing prior to July 19, 1926, and the concurrent rates intrastate in Alabama, thus depriving the petitioners and shippers generally of the right to a full hearing and due process of law in violation of the 5th Amendment to the Constitution of the United States, and in violation of the Acts of Congress which grant [fol. 15] to shippers, state authorities and others in such cases a full hearing.

(f) In violation of the Commerce Clause, Paragraph 3, Section 8, of Article I, of the Constitution of the United States, in that, without pleadings or proof of any burden on interstate commerce, the Interstate Commerce Commission assumed to regulate the entire intrastate commerce on fertilizers and fertilizer materials in the State of Alabama in violation of said constitution provision and of paragraph 2, subparagraph (a), of section 1 of the Acts to Regulate Commerce.

(g) In ordering fixed maximum and minimum rates applicable intrastate in Alabama, when prescribing interstate rates that are but maximum rates, subject to exceptions and deviations at the will of the carriers.

(h) In permitting for interstate rates variations from the mileage scales from the Ohio River into Alabama, Georgia and Mississippi, and in permitting groupings with distances figured from representative points while denying a similar situation intrastate in the State of Alabama.

(i) In prescribing a relationship between interstate and intrastate rates on fertilizers and fertilizer materials applicable only on domestic shipments, when the true relationship of the rates is impossible of determination without considering import rates.

(j) In determining the existence of unjust discrimination and undue preference by the consideration only of the outbound rates on the commodities shipped by manufacturers when the true relationship between manufacturers and their respective advantages is determinable only by the consideration of the inbound as well as the outbound rates.

(k) In issuing such a general order that no one knows or can know what particular parts of the intrastate rates, if any, are in competition with or discriminate against interstate shippers.

(l) In determining and ordering a condemnation of the intrastate rates in Alabama without any evidence whatsoever that such rates violated section 3 of the Acts to Regu- [fol. 16] late Commerce, which was the section pleaded as having been violated by such intrastate rates.

Wherefore, petitioners pray:

(1) That on the filing of this petition, and after a hearing had on three days' notice to defendants, this court, under its order, temporarily stay or suspend the enforcement, operation and execution of the order and orders entered by the Interstate Commerce Commission under the proceeding known as "Fertilizers and Fertilizer Materials between Southern Points" insofar as such orders affect intrastate rates within the State of Alabama.

(2) That an interlocutory injunction suspending and restraining the enforcement, operation, and execution of said orders of the Interstate Commerce Commission insofar as such orders affect rates for transportation wholly within the State of Alabama.

(3) Enjoining defendant carriers until final hearing, from collecting the rates prescribed in the tariffs affecting rates on transportation wholly within said State claimed to be filed in conformity with the order of the Interstate Commerce Commission of October 3, 1927, and from collecting other or different rates than those prescribed for intrastate application by the Alabama Public Service Commission in the State of Alabama.

(4) That after further hearing in accordance with law, said court suspend, set aside, and annul the order of October 3, 1927, the findings of July 19, 1926, and any and all other orders or findings authorizing, permitting or requiring interference with the intrastate rates of Alabama on the commodities of fertilizers and fertilizer materials.

(5) That a permanent injunction be granted against the carrier defendants, enjoining them as prayed in paragraph (3) of this prayer.

(6) That should the Interstate Commerce Commission permit, on the petition of November 29, 1927, hereinbefore referred to, the carriers therein named to file tariffs in accordance with the order of October 3, 1927, petitioners be permitted to amend and make such carriers parties defend-
[fol. 17] ant, and that all orders hereinbefore prayed for shall run against such carriers.

(7) That the court make such other and further order or orders as is meet and proper in the premises.

(8) That notice hereof be served upon the United States by leaving a copy of this petition and the order thereon with the Interstate Commerce Commission; that a temporary restraining order, an interlocutory injunction, and a permanent injunction be granted conformable to the prayers of this petition, and that a writ of subpœna of the United States of America, directed to the said defendants hereinbefore named, commanding them on a date certain to appear and answer this bill of complaint and to abide and perform such order and decree in the premises as the court shall deem proper and required by the principles of equity and good conscience.

(9) That a three-judge court be assembled as required by the statute, and that hearing be had at the earliest possible date to the end that irreparable damage may be prevented by the granting of a temporary restraining order.

And petitioners will ever pray.

Charlie C. McCall, Attorney General, State of Alabama; J. Q. Smith, Assistant Attorney General of the State of Alabama, Assigned to Alabama Public Service Commission. Address: Montgomery, Alabama. Hugh White, Edgar Watkins, Special Solicitors for Complainants and of Counsel. Address: 403 Atlanta Trust Building, Atlanta, Georgia.

Duly sworn to by J. H. Alldredge. Jurat omitted in printing.

At Chambers, December 21, 1927

The foregoing bill read and considered. Let notice be given the United States as required by statute and let [fol. 18] service of a subpœna be had on all the other defendants under the rules of this court and let all the defendants be given a copy of this petition and of this order.

And the defendants are required to show cause before the court composed, as required by the statutes of the United States, at Chambers, New Orleans, La., on the 27th day of December, 1927, why a temporary restraining order and an interlocutory injunction shall not be issued.

It is further ordered that at such hearing testimony may be presented by affidavits.

W. I. Grubb, U. S. Judge, Northern District of Alabama.

EXHIBIT B TO BILL OF COMPLAINT

INTERSTATE COMMERCE COMMISSION

No. 16295

Fertilizer and Fertilizer Materials Between Southern Points

Decided July 5, 1927

Upon further consideration, found:

1. That Fourth Section Order No. 9346 should be amended to authorize carriers operating circuitous routes to meet the rates of the direct lines and to maintain higher rates from and to intermediate points although such rates may exceed the scale prescribed in our original report, 113 I. C. C., 389, if strictly applied.

2. That the petition of the Carolina Railroad for relief from the long-and-short-haul provision of the fourth section with respect to rates to Snow Hill, N. C., should be denied.

3. That the Nelson & Albemarle Railway Company, the Linville River Railway Company, and the Atlanta & St. Andrews Bay Railroad Company should be permitted to charge rates 50 cents per ton in excess of [fol. 19] the standard-line scale prescribed in our original report.

4. That the petitions of the Louisville & Nashville on behalf of the Glasgow Railway Company and the Elkton & Guthrie Railroad Company for authority to charge [illegible] cents per ton in excess of the standard-line scale should be denied.

B. G. Brown and Charles Barham for various southeastern carriers.

J. F. Dalton for Carolina Railway Company.

James Menzies for Atlantic Coast Line Railroad Company.

J. A. Streyer for Nelson & Albemarle Railway Company and Linville River Railway.

H. W. Woolf for Atlanta & St. Andrews Bay Railway Company.

E. A. DeFuniak for Glasgow Railway Company and Elkton & Guthrie Railroad Company.

Second Supplemental Report of the Commission on Further Consideration

EASTMAN, Commissioner:

In our original report herein, 113 I. C. C. 389, we prescribed a distance scale of rates on fertilizers and fertilizer materials within southern territory, and said, at page 424, * * * in applying such rates to the longer hauls the respondent carriers may for purposes of tariff simplification, subject to our approval, use groups of moderate extent and measure the rates by distances to and from fairly representative points in such groups.

It appears that in the maintenance of groups under the foregoing authority, the rates between various points will be somewhat higher than they would be if the scale were strictly applied on a point-to-point basis. Such departures from the scale were forbidden in Fourth Section Order No. 9346, issued in connection with our original report, and the carriers now ask that that order may be amended so that it will not interfere with the grouping plan. No [fol. 20] objection to such an amendment has come to our attention, and in order that reasonable groupings may be maintained some leeway in this respect seems to be necessary. We note, however, that in quite a number of instances the rates will exceed the strict scale basis by as much as 20 cents per ton, and in a few instances by still greater amounts. This goes beyond what we understood would be the limit of departure from the scale, and beyond what seems to be reasonably necessary.

Fourth Section Order No. 9346 will be amended to permit the maintenance of rates from and to intermediate points on circuitous routes in excess of the scale basis strictly applied, but subject, however, to the limitation that on and after September 20, 1927, such rates shall not exceed the scale basis by more than 15 cents per ton.

The Carolina Railroad, a company controlled through stock ownership by the Norfolk Southern, extends from Kinston, N. C., its junction with the Norfolk Southern and the Atlantic Coast Line, 15 miles northwesterly to Snow Hill, N. C., its terminus. Six miles to the east is the line of the East Carolina Railway, which reaches this section from the north and connects with the Norfolk Southern at Farmville, N. C., and with the Atlantic Coast Line at Tarboro, N. C. Maury and Hookerton, N. C., are local stations on the East Carolina, situated almost opposite Snow Hill, Hookerton being the terminus of the line and 13 miles south of Farmville. Dealers at Maury, Hookerton, and Snow Hill compete actively, it is stated, in the intervening farming country. The Carolina Railroad asks for authority to maintain the same rates on fertilizers and materials to Snow Hill as are contemporaneously in effect to Maury, and to maintain rates to the intermediate stations on the basis prescribed in our original report. It is proposed, for example, to maintain a rate from Norfolk, Va., to Snow Hill of $2.65 per ton, this being the rate in effect to Maury and Hookerton, and to maintain a rate of $3.45 to the first station intermediate to Snow Hill.

The Carolina Railroad is in poor financial condition. In 1926 its railway operating income was only $2,715 and it has a deficit in net income of $4,690. In our original report we authorized it to charge 50 cents per ton over and above the standard-line rates, but the full amount of this [fol. 21] arbitrary does not accrue to it on traffic interchanged with the Norfolk Southern by reason of the fact that the arbitrary, under our order, is prorated with the latter line. The petitioner shows that for the four years, 1923 to 1926, and for the first four months of 1927, there was a total movement of fertilizer to Snow Hill of 21,050 tons, and to the six intermediate stations on its line of 8,010 tons. It fears the loss of the greater portion of the tonnage to Snow Hill if its rates to that point are not reduced to meet the rates in effect to Maury, inasmuch as the highways

in this section are in good condition and the farmers are likely to go to Maury for their fertilizer if the price is more favorable there than at Snow Hill. On the other hand, petitioner does not wish to reduce the rates to the intermediate points in order to conform to the provisions of the fourth section.

The relief sought is objected to by the Atlantic Coast Line. That carrier points out that there is considerably more territory tributary to Snow Hill than to Maury, and contends that if the farmers would go to farther distant points for their fertilizer because of the higher price at Snow Hill, they would probably go to Farmville instead of to Maury, as the highway to the former is in better condition and the saving in price would be still greater. From our understanding of the situation, also, it seems improbable that the entire tonnage to Snow Hill is used in the territory between that station and Maury; it is more likely that a considerable portion is used in the section west of Snow Hill and is less subject, therefore, to the competition at Maury.

We are not convinced that the relief sought is necessary or desirable under the circumstances, and the petition will therefore, be denied.

In our original report we authorized certain short or weak-line carriers to charge 50 cents per ton over and above the standard-line scale, and this arbitrary is now sought by the Nelson & Albemarle Railway, the Linville River Railway, the Atlanta & St. Andrews Bay Railway, and by the Louisville & Nashville on behalf of the Glasgow Railway and the Elkton & Guthrie Railroad. The first three carriers named above are in poor financial condition, and from [fol. 22] a traffic standpoint are said to be in the same position as are the lines that were accorded the arbitrary basis under our original order. No objection has been offered to the relief sought, and we see no reason why a supplemental order should not be entered authorizing these lines to maintain the higher basis.

Both the Glasgow Railway and the Elkton & Guthrie connect with the Louisville & Nashville, and are operated by that carrier under leases whereby it turns over to them the net profits that accrue through their operation. It is understood that the Louisville & Nashville sustains any loss that may occur. Neither the Glasgow nor the Elkton

and Guthrie files tariffs with us, nor does either participate in tariffs filed by other lines. They are operated, apparently, as a part of the Louisville & Nashville system. Furthermore, it is not shown that the Glasgow Railway is in financial difficulties. In this connection attention may be called to the fact that in Stock of Glasgow Railway, 117 I. C. C., 578, we authorized it to issue a stock dividend of $100,000.

The relief sought by these lines will be denied.

Appropriate orders will be entered.

At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 5th Day of July, A. D., 1927

No. 16295

Fertilizer and Fertilizer Materials Between Southern Points

Fifth Supplemental Order

Upon further consideration of the matters and things involved in the above-entitled proceeding, and of the petitions of various carriers for modification of our previous findings and orders herein:

It is ordered, That the terms of the orders entered in connection with the original report in the above-entitled [fol. 23] proceeding under date of July 19, 1926, and as subsequently amended, shall apply to the Atlanta & St. Andrews Bay Railway Company, the Linville River Railway Company, and the Nelson & Albemarle Railway Company to the same extent and in the same manner as they do to the carriers included in Appendix DD to the supplemental report of April 4, 1927.

It is further ordered, That the petition of the Louisville & Nashville Railroad Company on behalf of the Elkton & Guthrie Railroad Company and the Glasgow Railway Company for authority to charge 50 cents per ton for the transportation of fertilizers and fertilizer materials in addition to the standard line scale prescribed in our original report herein, be, and the same are hereby, denied.

It is further ordered, That the petition of the Carolina Railroad Company, dated June 10, 1927, seeking relief from the provisions of the fourth section of the act in connection with rates on fertilizers and fertilizer materials to Snow Hill, N. C., be, and the same is hereby, denied.

Fourth Supplemental Fourth Section Order, No. 9346

Upon consideration of the joint petition of B. G. Brown and Charles Barham on behalf of various carriers parties to the above-entitled proceedings, and good cause appearing therefor:

It is ordered, That Fourth Section Order No. 9346 of July 19, 1926, as subsequently amended, be, and the same is hereby, further amended by adding thereto the following paragraph:

It is further ordered, That should the carriers parties to the above-entitled proceeding, in maintaining the rates herein prescribed, establish goups of destination or origin points, and the circuits lines or routes shall meet the rates of more direct routes from or to points in said groups, they may maintain higher rates from and to intermediate points even though such rates shall exceed the rates prescribed for the distance involved, provided, however, that in no case shall the rates at such intermediate points exceed the rates prescribed by more than 15 cents per ton on and after September 20, 1927.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 24] Exhibit C to Bill of Complaint

At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 3rd Day of October, A. D., 1927

No. 16336

In the Matter of Rates on Fertilizers and Fertilizer Material and Articles Taking the Same Rates Intrastate Within the State of Alabama

Order

This case being a proceeding instituted by the Commission upon petition filed and having been duly heard and

submitted by the parties and full investigation of the matters and things involved having been had, and the Commission under date of July 19, 1926, having made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

And it appearing, That the carriers parties hereto have published rates for application to the interstate transportation of fertilizers and fertilizer materials which substantially comply with the commission's findings herein, but continue to publish for application to similar traffic within the State of Alabama rates which are upon a substantially lower basis.

It is ordered, That the common carriers by steam railroad, parties to this proceeding, namely, Atlantic Coast Line Railroad Company, Seaboard Air Line Railway Company, Southern Railway Company, Alabama Great Southern Railroad Co., Atlanta, Birmingham & Atlantic Railway Company (B. L. Bugg, Receiver), Central of Georgia Railway Company, Louisville & Nashville Railroad Company, Mobile & Ohio Railroad Company, The Nashville, Chattanooga & St. Louis Railway, Northern Alabama Railway Company, St. Louis-San Francisco Railway Company, Illinois Central Railroad Company and The Western Railway of Alabama, according as they respectively participate in [fol. 25] the transportation, be, and they are hereby, notified and required to cease and desist, on or before January 3, 1928, from practising the undue prejudice, undue preference and advantages and unjust discrimination found in said report to exist in the relation of interstate and intrastate rates and charges for the transportation of fertilizers and fertilizer materials within the State of Alabama.

It is further ordered, That the said carriers, according as they respectively participate in the transportation, be, and they are hereby, notified and required to establish, on or before January 3, 1928, upon notice to this Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain rates and charges for the transportation of fertilizer and fertilizer materials in intrastate commerce within the State of Alabama which shall be not less, for corresponding distances, than the rates contemporaneously applied by said

carriers, in accordance with our order of July 19, 1926, and as subsequently amended, to the transportation by said carriers of fertilizers and fertilizer materials between points in the State of Alabama and points in other states of the United States.

It is further ordered, That this order shall remain in force until the further order of this Commission.

And it is futher ordered, That this order be served upon each of the carriers named in the order.

By the Commission.

George B. McGinty, Secretary. (Seal.)

EXHIBIT D TO BILL OF COMPLAINT

Maximum Commodity Rates on Fertilizer, Fertilizer Materials, and Related Articles, Carloads

Rates in Cents per Ton of 2,000 Pounds

Distance	1	2
5	80	...
10	90	120
15	100	130
[fol. 26] 20	110	140
25	120	150
30	125	155
35	130	160
40	135	165
45	140	170
50	145	175
55	150	180
60	155	185
65	160	190
70	165	195
75	170	200
80	175	205
85	180	210
90	185	215
95	190	220
100	195	225
110	205	235

Distance	1	2
120	215	245
130	225	255
140	235	265
150	245	275
160	255	275
170	265	285
180	275	295
190	285	305
200	295	315
210	305	325
220	315	335
230	325	345
240	335	355
250	345	365
260	355	375
280	365	385
300	375	395
320	385	405
340	395	415
360	405	415
380	415	425
400	425	435
[fol. 27] 420	435	445
440	445	455
460	455	465
480	465	475
500	475	485
520	485	485

Explanation of Columns

The specific commodity Rate Tables shown above shall be applied as follows:

Rate Table No. 1. For single-line application between points within this State for the maximum distance of each line referred to in the report as short lines.

Rate Table No. 2. For joint-line application between points within this State located on two or more of the severally named railroads referred to in the report as standard lines.

IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF UNITED STATES—Filed January 12th, 1928

United States of America, defendant, for answer to the petition filed herein against it says:

I. Defendant admits the matters and things alleged in paragraph I in manner and form as alleged.

II. On information and belief, defendant admits the matters and things alleged in paragraph II in manner and form as alleged.

III. Defendant admits the matters and things alleged in paragraph III in manner and form as alleged with this exception: defendant denies the characterization of the petitioners "in said proceeding, and on the 3rd day of October, 1927, the Interstate Commerce Commission issued an order in Docket 16336, a part of said consolidated hearing, in which order there was a general condemnation of the intrastate rates of the State of Alabama on fertilizers and fertilizer materials, both carload and less than carload."

[fol. 28] IV. Defendant admits the matters and things alleged in paragraph IV in manner and form as alleged with this exception: defendant denies "the jurisdiction of said court depends upon the fact that this action arises under the Constitution and laws of the United States."

V. Defendant has no knowledge of the matters and things alleged in paragraph V in manner and form as alleged, it neither admits nor denies the same, and if they become material upon the hearing it will require strict proof thereof.

VI. Defendant admits the matters and things alleged in paragraph VI in manner and form as alleged with this exception: defendant alleges the allegations with respect to the complaint filed in the proceeding referred to in paragraph VI do not constitute or reflect the substance in its entirety of the complaint before the Interstate Commerce Commission, and defendant, therefore, refers to the complaint as a whole for the full contents and purport thereof.

VII. Defendant admits the matters and things alleged in paragraph VII in manner and form as alleged.

VIII. Defendant denies the matters and things alleged in paragraph VIII and each and every part of the same in manner and form as alleged. Defendant alleges that the issues raised by the complaint referred to, and the order of the Commission of October 14, 1924, should be determined from the face of the complaint and order and not by the interpretation of the petitioners placed thereon by the allegations contained in paragraph VIII.

IX. Defendant admits the matters and things alleged in paragraph IX in manner and form as alleged, but alleges that the allegations are inadequate to constitute or reflect the full scope of the investigation conducted by the Interstate Commerce Commission and the steps preliminary thereto. For fuller information with respect to those subjects defendant refers to the report of the Commission of July 19, 1926.

X. Defendant admits the matters and things alleged in paragraph X in manner and form as alleged, but alleges that the quotation from the order of the Commission of [fol. 29] October 7, 1924, does not constitute or reflect the full substance of the order; and defendant, therefore, refers to the order in its entirety for the full contents and purport thereof.

XI. Defendant denies the matters and things alleged in paragraph XI and each and every part of the same in manner and form as alleged.

XII. Defendant denies the matters and things alleged in paragraph XII and each and every part of the same in manner and form as alleged with these exceptions: (a) defendant admits the words in quotation marks in paragraph XII, but alleges they do not constitute or reflect the full substance of the report of the Commission, and defendant, therefore, refers to the report in its entirety for the full contents and purport thereof; (b) defendant denies that the excerpts or fragments from the report of the Commission contained in Exhibit A attached to the petition are the pertinent parts of the report; and defendant alleges that the excerpts or fragments do not constitute or reflect the full

substance of the report; and defendant, therefore, refers to the report in its entirety for the full contents and purport thereof.

XIII. Defendant denies the matters and things alleged in paragraph XIII and each and every part of the same in manner and form as alleged.

XIV. Defendant denies the matters and things alleged in paragraph XIV and each and every part of the same in manner and form as alleged.

XV. Defendant denies the matters and things alleged in paragraph XV and each and every part of the same in manner and form as alleged with this exception: defendant admits the Commission made the finding referred to and, subject to verification, the words in the quotation marks are correct.

XVI. Defendant denies the matters and things alleged in paragraph XVI and each and every part of the same in manner and form as alleged.

XVII. Defendant has no knowledge of the matters and things alleged in paragraph XVII in manner and form as [fol. 30] alleged, it neither admits nor denies the same, and if they become material upon the hearing it will require strict proof thereof.

XVIII. Defendant has no knowledge of the matters and things alleged in paragraph XVIII in manner and form as alleged, it neither admits nor denies the same, and if they become material upon the hearing it will require strict proof thereof.

XIX. Defendant has no knowledge of the matters and things alleged in paragraph XIX in manner and form as alleged, it neither admits nor denies the same, and if they become material upon the hearing it will require strict proof thereof.

XX. Defendant has no knowledge of the matters and things alleged in paragraph XX in manner and form as alleged, it neither admits nor denies the same, and if they become material upon the hearing it will require strict proof thereof.

XXI. Defendant has no knowledge of the matters and things alleged in paragraph XXI in manner and form as alleged, it neither admits nor *nor* denies the same, and if they become material upon the hearing it will require strict proof thereof.

XXII. Defendant denies the matters and things alleged in paragraph XXII and each and every part of the same in manner and form as alleged with this exception: defendant admits that on October 3, 1927, the Interstate Commerce Commission entered the order referred to and, subject to verification, that Exhibit C is a true copy thereof.

XXIII. Defendant has no knowledge of the matters and things alleged in paragraph XXIII in manner and form as alleged, it neither admits nor denies the same, and if they become material upon the hearing it will require strict proof thereof.

XXIV. Defendant has no knowledge of the matters and things alleged in paragraph XXIV in manner and form as alleged, it neither admits nor denies the same, and if they become material upon the hearing it will require strict proof thereof.

[fol. 31] XXV. Defendant denies the matters and things alleged in paragraph XXV and each and every part of the same in manner and form as alleged.

XXVI. Defendant denies the matters and things alleged in paragraph XXVI and each and every part of the same in manner and form as alleged.

XXVII. Defendant denies the matters and things alleged in paragraph XXVII and each and every part of the same in manner and form as alleged.

Defendant attaches hereto and makes a part of this answer as full and completely as if incorporated herein in extenso, the following reports and orders of the Interstate Commerce Commission in the proceeding No. 16295, and entitled "Fertilizers and Fertilizer Materials between Southern Points," that is to say—

1. Report and order of July 19, 1926, and officially reported as 113 Interstate Commerce Commission Reports, page 389, et seq.

2. Supplemental report and order of April 4, 1927, and officially reported as 123 Interstate Commerce Commission Reports, page 193, et seq.

3. Second Supplemental report and order of July 5, 1927, and officially reported as 129 Interstate Commerce Commission Reports, page 215, et seq.

Further answering, defendant alleges that the matters and things set forth in the petition and sought to be put in issue before the court were all before the Interstate Commerce Commission, were fully heard and determined by it, and were within its power and authority to hear and determine under the provisions of the Interstate Commerce Act; in its reports in writing, made after full hearing and on due notice to all of the parties, which state its conclusions together with its decision, order or requirement in the premises, the matters and things of which complaint is made were fully considered by the Commission and foreclosed by its findings of fact based on substantial evidence of which the parties were advised.

Defendant alleges that the facts set forth in the reports of the Commission and each and all of the same are true and correct.

[fol. 32] Defendant specifically denies (a) any fact or facts alleged in the petition, or any part of the same, which deny, or which seek to deny, any fact or facts found by the Commission; (b) any fact or facts alleged in the petition, or any part of the same, which are inconsistent with any fact or facts found by the Commission; (c) any and all inferences of fact from any particular fact or facts alleged in the petition, or any part of the same, which seek to deny, or which are inconsistent with, any fact or facts found by the Commission; (d) any fact or facts alleged in the petition, or any part of the same, which set up, or which seek to set up, matters and things which were not before the Commission; (e) any fact or facts alleged in the petition, or any part of the same, which attack or which seek to attack, the action of the Commission, and to show facts other than what the Commission has found and declared; (f) any allegations in the petition, or any part of the same, which allege that facts were found by the Commission in its reports and orders which, as shown on the face thereof, were not so found; (g) any conclusions of law alleged and

insisted upon in the petition, or any part of the same, which are inconsistent with any conclusions of law held by the Commission; (h) each and every allegation in the petition contained not herein specifically admitted or denied.

Wherefore, having fully answered, defendant prays that the petition be dismissed at the cost of the petitioners and for such other and further order as may be appropriate.

Blackburn Esterline, Assistant to the Solicitor General. Charles B. Kennamer, United States Attorney.

Duly sworn to by Blackburn Esterline. Jurat omitted in printing.

[fol. 33] EXHIBIT No. 1 TO ANSWER OF UNITED STATES—Filed January 12th, 1928

INTERSTATE COMMERCE COMMISSION

No. 16395[1]

Fertilizers and Fertilizer Materials Between Southern Points

Submitted April 16, 1926. Decided July 19, 1926

1. The general basis of rates on fertilizer and fertilizer materials in southern territory being under consideration; Found, That in view of the characteristics of this traffic it is reasonably entitled to a relatively low basis of rates.

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[1] This report also embraces Docket No. 16335, In the Matter of Rates on Fertilizers and Fertilizer Materials Intrastate Within State of South Carolina; Docket No. 16336, In the Matter of Rates on Fertilizers and Fertilizer Materials and Articles Taking the Same Rates Intrastate Within State of Alabama; and Docket No. 16484, In the Matter of Rates on Fertilizer and Fertilizer Materials and Articles Taking the Same Rates Intrastate Within State of Georgia, also various fourth-section applications listed in Appendix E.

2. Maximum reasonable rates based on a distance scale prescribed for uniform application over standard lines between points in southern territory.

3. Certain so-called short or weak lines accorded arbitraries or a percentage over the rates prescribed for standard lines.

4. Undue prejudice found to exist against persons and localities in interstate commerce and unjust discrimination against interstate commerce by reason of the intrastate rates in Alabama.

5. The effective intrastate rates in Georgia and South Carolina found not to be unlawful for the future, except in individual instances.

6. Fourth-section relief granted.

[fol. 34] Frank W. Gwathmey for Atlantic Coast Line Railroad Company, Central of Georgia Railway Company, Seaboard Air Line Railway Company, and others; W. N. McGehee for Southern Railway system lines and Mobile & Ohio Railroad Company; James Menzies for Atlantic Coast Line Railroad Company; William B. Rodman and J. F. Dalton for Norfolk Southern Railroad Company, Carolina Railroad, and Kinston Carolina Railroad; Roy Pope and Gus Richmond for Atlanta, Birmingham & Atlantic Railway and receiver; Edward D. Mohr and L. L. Drescher for Louisville & Nashville Railroad Company; J. L. Sheppard for Illinois Central Railroad Company and Yazoo & Mississippi Valley Railroad Company; Alex M. Bull for Gulf, Mobile & Northern Railroad and Birmingham & Northwestern Railway Company; J. E. Monroe for Alabama & Vicksburg Railway; N. V. Hutchinson for Columbus & Greenville Railway Company; and E. C. Ash for Alabama, Tennessee & Northern Railroad Corporation and Alabama & Northwestern Railroad Company.

J. A. Streyer for members of American Short Line Railroad Association.

A. G. Patterson, Hugh White, and J. H. Alldredge for Alabama Public Service Commission; James A. Perry and E. M. Price for Georgia Public Service Commission; R. Hudson Burr and J. H. Tench for Florida Railroad Com-

mission; M. C. Moore and B. F. Martin for Mississippi Railroad Commission; A. J. Maxwell for North Carolina Corporation Commission; Rush H. Knox, attorney general of Mississippi; and Oscar Vest, Isaac Wilder, Moses R. Glenn, and L. F. Orr for Kentucky Railroad Commission.

Charles E. Cotterill for American Farm Bureau Federation, Southern Traffic League, National Fertilizer Association, and others; Harry T. Moore for Atlanta Freight Bureau; John A. O'Rourke for West Palm Beach Traffic Bureau, West Palm Beach, Fla., and Miami Traffic Bureau, Miami, Fla.; R. L. Askea for Raleigh Freight Traffic Bureau, Durham, N. C., Chamber of Commerce, Farmville Oil & Fertilizer Company, and Fremont Oil Mill Company; T. A. Bosley for National Fertilizer Association, Southern Fertilizer Association, Southern Traffic League, and Virginia-Carolina Chemical Company; A. J. Young for Inter-[fol. 35] national Agricultural Corporation; M. R. Beaman for Eastern Carolina Wholesale Dealers & Manufacturers Association; M. Walsh and E. M. Weatherly for Dothan Chamber of Commerce; Jas. S. Davant for Memphis Freight Bureau; J. L. Roberts for Barrett Company; W. H. Hendley for Spartanburg Transportation Association; Thomas J. Burke for Charleston Traffic Bureau; A. J. Whitman for American Agricultural Chemical Company; and R. L. Rogers for Swift & Company.

J. O. Cromwell for Macon Chamber of Commerce and Cotton States Fertilizer Company; Frank E. Harrison for Florida Traffic Association; R. G. Cobb for Mobile Chamber of Commerce; E. B. Gaines for Savannah Traffic Bureau; L. F. Daspit for Louisiana Farm Bureau Federation; Fred Juenger for Texas Gulf Sulphur Company; Thos. D. Guthrie for Jacksonville Traffic Bureau, Incorporated; C. W. Hayward for City of Meridian, Miss., and Meridian Traffic Bureau; D. A. Dashiell for Royster Guana Company; and Hugh M. Frampton and R. O. E. Davis for United States Department of Agriculture.

Robert E. Quirk and Norman, Quirk & Graham for American Cyanamid Company; Carl Giessow and Edgar Moulton for New Orleans Joint Traffic Bureau; C. L. Neill and T. P. Goodwin for Mississippi Farm Bureau Federation; F. W. Beyer for Nitrate Agencies Company and W. R. Grance & Company; J. A. Parrish for Lakeland Chamber of Commerce and Non-Acid Fertilizer & Chemical Com-

pany; J. W. Kirtland for Standard Chemical Company; T. M. Henderson and N. S. Owen for Read Phosphate Company and Traffic Bureau of Nashville; M. M. Caskie for Alabama Cottonseed Crushers Association and Montgomery Chamber of Commerce; H. E. Snow for Southeastern Live Stock Association; and B. F. Martin and A. R. Fallon for Union Sulphur Company.

Hugo Ignatius and H. P. Friedman for Portmouth Oil & Refining Company, Montezuma Cotton Oil Company, Perkins Oil Company, and others; Hugo Ignatius for Buckeye Cotton Oil Company, Southern Cotton Oil Company, Mississippi Cottonseed Crushers Association, and others; Wm. H. Fleming for Southern States Phosphate & Fertilizer Company; W. C. Ermon for Southern Cotton Oil Com-[fol. 36] pany, Southern Traffic League, and Interstate Cotton Seed Crushers Association; F. G. Moore for Davison Chemical Company and National Fertilizer Association; W. Albert Wilde for Lexington Board of Commerce; and Mason Manghum and T. D. Geoghegan for Virginia Shippers' Association.

Report of the Commission

Eastman, Commissioner:

Dissatisfaction on the part of shippers and users as well as of carriers with the rates on commercial fertilizer and fertilizer materials in southern territory[1] has for some time been increasingly evident. Our decisions upon such formal complaints as have been brought have served only to mitigate the discontent in the particular sections affected. Interstate rates vary greatly for substantially similar hauls; many indefensible fourth-section departures exist; and the intrastate rates which have been enforced by some of the States are attacked by the carriers as unreasonably low, and it is alleged that they adversely affect manufacturers and dealers shipping into those States over interstate routes. During 1924 three petitions were filed with

[1] A description of southern territory as covered by this investigation will be found in Appendix A. In general, it embraces southern classification territory, including the State of Virginia.

us by carriers seeking relief under section 13 of the interstate commerce act from the intrastate rates, respectively, in South Carolina, Alabama, and Georgia.[3] Three times the rates on fertilizer from Norfolk, Va., to points in North Carolina have been before us in what have come to be known as the Royster cases,[4] but the rates there finally prescribed are now deemed unsatisfactory by the Corporation Commission of North Carolina. These conditions obtaining throughout southern territory led us on October 7, 1924, upon our own motion to institute a general investigation and inquiry—

into and concerning said interstate rates on fertilizers, fertilizing compounds, and fertilizer materials and the [fol. 37] changes resulting therefrom, * * * with a view to determining whether said rates and charges are unreasonable or are unduly prejudicial to or unduly preferential of particular localities or persons and to making such order or orders as may be proper in the premises.

This order is given in full in Appendix A.

The purpose of this proceeding, therefore, is to determine upon a basis of interstate rates for the movement of fertilizers and fertilizer materials throughout southern territory which will be reasonable and free from undue prejudice and preference, and which will conform, as nearly as may be, to the provisions of the fourth section. With the proceeding have been consolidated for hearing and disposition the three section 13 cases already referred to. While other intrastate rates have not been brought in issue, the desirability of fixing interstate rates which can appropriately and fairly be used as a basis for uniformity in both classes of rates has been recognized from the outset.

At the initial hearing the parties were advised that the principles of the so-called Hoch-Smith resolution are now

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[3] Dockets Nos. 16335, 16336, and 16484, respectively, already referred to.

[4] Royster Guano Co. v. A. C. L. R. R. Co., 31 I. C. C. 458; Same v. Same, 38 I. C. C. 190; and Same v. Same, 50 I. C. C. 34.

a part of the law, and that conclusions would be reached with those principles in mind.

The State commissions of Alabama, Georgia, Florida, Mississippi, Kentucky, and North Carolina were represented at the hearings, and they took an active and helpful part in developing the record. At the instance of the shipping interests, the United States Department of Agriculture also participated, its aim being merely to present certain facts and statistics relative to the industry and to the use of fertilizer.

A report proposed by the examiner was served upon the parties, and to that report exceptions were filed by the carriers as well as by other interests. Our conclusions differ somewhat from those which he proposed.

Importance of Fertilizer to Southern Territory

Of the various sections of the country, southern territory is by far the largest user of fertilizer. Out of a total consumption in the United States of 6,647,308 tons in 1923 it used 4,220,807 tons. Of the Southern States, North Carolina, South Carolina, and Georgia led in the amount con- [fol. 38] sumed, their total for that year being 2,436,375 tons. In 1924 the total production was 7,272,000 tons, of which southern territory used 4,680,000 tons, a little less than half of which was used on cotton alone. Of a total of 573 plants in the United States devoted exclusively to the production of fertilizer, 422 were in southern territory, Georgia having more than 120 plants. In 1923 the average consumption of fertilizer per acre, determined by dividing the total amount used by the acreage under cultivation, was as follows:

	Pounds
Florida	557
North Carolina	298
South Carolina	231
Virginia	210
Georgia	136
Alabama	103
Mississippi	65
Louisiana	51
Tennessee	32
Kentucky	30

The above figures do not represent the actual application per acre, for not all cultivated lands are fertilized. For example, in Alabama the average amount used per acre on fertilized crops was about 230 pounds. In some cases high as 800 pounds per acre are used on cotton, but this is much above the average. In tobacco growing and truck farming the application per acre is somewhat greater than in the case of cotton. The relatively large consumption in Florida is accounted for by its large production of vegetables and fruits.

Fertilizer tonnage is also of relatively greater importance to the southern carriers than to the line in other sections. In 1923 such tonnage of the southern roads represented 1.46 per cent of their total freight tonnage, as compared with 0.35 per cent in the eastern district and 0.18 per cent in the western district. The Atlantic Coast Line leads the southern carriers in the total of fertilizer handled, with the Southern second and the Seaboard Air Line third. In the ratio of fertilizer to total freight, the Central of Georgia ranks first, its fertilizer tonnage being 6.61 per cent of [fol. 39] the total, with the Atlantic Coast Line second and the Norfolk Southern third. These tonnage figures do not include such materials as potash, acid phosphate, and nitrate of soda, which, for purposes of our statistical returns, are included in commodity Group 66 chemicals and explosives. If these were included, the fertilizer tonnage figures would be appreciably increased. The total revenue of Class I roads in the southern district for 1923 from such tonnage was $10,307,000, or 1.3 per cent of the total revenue from all freight handled. In the eastern district the revenue from fertilizer tonnage was but 0.3 per cent of the total. The revenue of the Atlantic Coast Line from this source was 4.7 per cent of its total freight revenue in 1924, and that of the Southern for the first seven months of 1924 was 3.63 per cent of its total for the same period.

It is beyond debate that agriculture in the South can not be conducted successfully without the use of fertilizer, and agriculture has been and probably still is the basic industry of that section. A vice president of the American Farm Bureau Federation testified that—

the relationship which fertilizer bears to successful agriculture is immediate and so direct as in large measure to

control the tonnage of agricultural products transportable by the carriers and indirectly to control their total tonnage by reason of the influence which successful agriculture has upon general conditions of prosperity throughout all lines of business in the South.

To the use of fertilizer in the South Atlantic States is due it is said, one-half of the tobacco crop, one third of the crop of white and sweet potatoes, wheat, and garden truck, and two-thirds of the cotton crop. Experiments conducted by the North Carolina Department of Agriculture proved that an application of 800 pounds of fertilizer per acre resulted in an increased production, over unfertilized soil, of 834 pounds of seed cotton per acre. In Alabama, experiments showed that while there was an average production of but 98 pounds of lint cotton per acre without fertilization, 203 pounds were produced by the use of 325 pounds of fertilizer per acre, and 260 pounds by the use of 650 pounds of fertilizer. Returns from the entire southern cotton area in 1924 indicated that with an average expenditure of $1.73 [fol. 40] per acre for fertilizer the yield was 36 pounds of lint cotton, whereas with an expenditure of $5.73 the yield was 637 pounds. It takes approximately 3 pounds of seed cotton to produce 1 pound of lint.

The Carriers' Proposal

In order to remove the many inconsistencies in the fertilizer-rate structure, the carriers propose for uniform application throughout southern territory, except as hereinafter noted, a distance scale of rates based on the scale prescribed in Royster Guano Co. v. A. C. L. R. R. Co., 50 I. C. C. 34, and hereinafter referred to as the Royster scale. That proceeding had to do with rates on fertilizer from Norfolk, Va., to points in North Carolina, and these rates, as has been stated, we thrice considered. They were first attacked by the Royster Guano Company in 1913 as unreasonable and unduly prejudicial to Norfolk and unduly preferential of Wilmington, N. C. On July 1, 1914, we prescribed a maximum distance scale with a carload minimum of 20,000 pounds. 31 I. C. C. 458. On October 13, 1914, a special committee appointed by the Governor of North Carolina promulgated certain State rates, and among

them rates on fertilizer which were materially lower than those we had prescribed. This brought further complaint from the Royster Guano Company. On February 18, 1916, we issued our second report reaffirming our previous finding and requiring the same level of rates to be maintained within North Carolina, in order to remove the undue prejudice to Norfolk and shippers at that point. Subsequently this second order was amended to increase the carload minimum from 20,000 to 24,000 pounds. Later, upon petition of the Corporation Commission of North Carolina, the amended order was vacated and the proceeding reopened for further hearing, that commission coming in as an intervener. As the outcome of the further hearing we adopted the intrastate rates in North Carolina as reasonable maximum rates from Norfolk to points in that State, but increased the carload minimum to 30,000 pounds.

The carriers do not propose this scale as a measure of maximum reasonable rates, but as a proper basis under all the circumstances and conditions. It is shown below for representative distances, with ton-mile and car-mile earn-
[fol. 41] ings, the latter being based on the proposed minimum of 30,000 pounds. All rates hereinafter are stated in amounts per net ton. The scale is shown in its entirety in Appendix C.

	Single line			Joint line		
	Proposed rate	Revenue per ton-mile	Revenue per car-mile	Proposed rate	Revenue per ton-mile	Revenue per car-mile
		Cents	Cents		Cents	Cents
5 miles	$0.90	18.00	270	....	....	....
10 miles	1.02	10.20	153	$1.36	10.60	204
25 miles	1.47	5.88	88	1.81	7.24	108
50 miles	1.80	3.00	54	2.14	4.28	64
75 miles	2.14	2.86	42	2.48	3.31	49
100 miles	2.59	2.59	38	2.82	2.82	42
150 miles	2.98	1.95	29	3.27	2.18	32
200 miles	3.38	1.69	25	3.72	1.86	27
250 miles	3.72	1.49	22	4.05	1.60	24
300 miles	4.05	1.35	20	4.39	1.46	22
400 miles	4.84	1.21	18	5.07	1.27	19
500 miles	5.52	1.12	16	5.74	1.15	17
600 miles	6.08	1.00	15.2	6.30	1.05	15.7
700 miles	6.64	.95	14.2	6.87	.98	14.7
800 miles	7.20	.90	13.5	7.43	.93	13.9
900 miles	7.77	.86	13.0	8.01	.89	13.4
1,000 miles	8.33	.83	12.5	8.55	.86	12.8

The foregoing scale is intended to apply not only on mixed fertilizers but on the various materials entering into

their manufacture. These materials are set out in Appendix B. Various carload minima are proposed in connection with the different materials, as shown in the appendix, ranging from 30,000 to 60,000 pounds, the majority taking 40,000 pounds. It will be observed from this list that phosphate rock is included only in its ground form and that sulphuric acid, with which the ground phosphate rock is treated, is not named. Neither is ground limestone embraced in the list. These commodities generally take somewhat lower rates than those accorded other materials, and all parties seem willing that they should be excluded from consideration in this proceeding.

In presenting this scale for application throughout southern territory the carriers explain that it is not intended to apply between points on the Chesapeake & Ohio, between points on the Norfolk & Western from Norfolk, Va., to Cincinnati, Ohio, nor between points on the Virginian from Norfolk to Deepwater, W. Va., these lines being embraced [fol. 42] in trunk-line territory and their rates being governed by the official classification. The exclusion of rates between these points, except local points on the Chesapeake & Ohio in Kentucky which were not included in the order, seems to have been predicated on anticipation that these carriers would individually participate in the proceeding to protect their respective interests; but although they were made parties, no appearances were entered on their behalf.

The Royster scale is proposed for uniform application by the carriers because it has been prescribed in two subsequent cases, namely, Freight Adjustment Steering Committee v. A. C. L. R. R. Co., 53 I. C. C. 506, decided June 9, 1919, and Goldsborough Chamber of Commerce v. A. C. L. R. R. Co., 91 I. C. C. 315, decided July 10, 1924, and because rates as high as or higher than that scale have been prescribed or approved in still other cases.[5] It is, therefore, considered that this scale has been impressed with our sanction. The cases above cited involved, respectively, rates on fertilizer and fertilizer materials from Charleston, S. C.,

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[5] Mount Pleasant Fertilizer Co. v. L. & N. R. R. Co., 50 I. C. C., 253; Meridian Traffic Bureau v. S. Ry. Co., 60 I. C. C. 5; Meridian Rate Case, 66 I. C. C. 179; Fertilizer to Montezuma, 74 I. C. C. 657; Fertilizers from New Orleans, 100 I. C. C. 64.

to North Carolina destinations, and from Wilmington, N. C., to destinations in the same State. Besides the rates maintained in accordance with our decisions, the Royster scale is also in effect from Richmond, Va., to destinations in North Carolina; from Wilmington and other points in North Carolina to destinations in South Carolina, from points in South Carolina to destinations in North Carolina, and from points in North Carolina to destinations in Virginia. The cases referred to in footnote 5 had to do, for the most part, with rates from and to specify points and covered territory of limited scope.

Of the total fertilizer tonnage handled by the Atlantic Coast Line in 1923, 46 per cent moved, it is testified, under the Royster scale. It is said to be lower, generally speaking, than the rates from Savannah, Atlanta, Elberton, and Macon, Ga., to various destinations in South Carolina; from Albany, Ga., to destinations in Florida; from Charleston to South Carolina destinations on imported fertilizer materials; from Dothan and Montgomery, Ala., to certain [fol. 43] Georgia destinations; and in certain other instances. Rates within Florida and Virginia are both higher and lower than the Royster scale. The carriers do not seek to convey the impression that, taken as a whole, the rates in the South are to-day higher than the Royster scale. It is merely claimed that numerous reductions will be effected by its uniform application.

About 70 per cent of the tonnage of fertilizer and fertilizer materials moving in southern territory is intrastate traffic, and the intrastate rates in the several States are compared below with the Royster scale, all being stated in cents:

(Here follows table, side folios 44 and 45)

[fol. 44]

	Va.[1]	N. C.	S. C.	Ga.	Fla.[2]	Ala.	Miss.[3]	La.[4]	Tenn.[5]	Ky.	Carriers' proposed scale
5 miles	45	90	90	68	147	80	90	90	135	90	90
10 miles	45	102	90	102	147	90	100	102	135	90	102
25 miles	102	147	120	124	169	120	100	102	147	113	147
50 miles	169	180	169	158	203	145	100	102	169	169	180
75 miles	203	214	198	180	237	170	120	113	203	225	214
100 miles	225	259	228	214	259	195	140	147	225	259	259
125 miles	259	270	258	259	282	225	180	180	225	259	270
150 miles	259	293	288	282	293	245	220	214	259	259	293
175 miles	293	327	307	304	315	275	260	248	259	270	327
200 miles	304	338	327	315	315	295	280	259	282	282	338
225 miles	315	360	337	338	315	325	320	259	282	293	360
250 miles	349	372	337	349	327	345	350	270	282	315	372
275 miles	394	394	337	360	327	365	370	282	....	315	394
300 miles	405	405	337	383	327	375	400	293	....	327	405
350 miles	450	450	....	439	338	405	....	....	....	....	450
400 miles	495	484	....	462	349	425	....	....	....	....	484
450 miles	518	518	....	484	360	455	....	....	....	....	518
500 miles	552	551	....	....	360	475	....	....	....	....	552

[fol. 45]

[fol. 45] [1] Scale 1 of the Southern, applicable south of Richmond and Danville, apparently the lowest scale in the State, but which the shippers say is fairly representative of Virginia rates.

[2] In Florida, fertilizer materials take 75 per cent of fertilizer rates.

[3] The intrastate rates in Mississippi are not uniform over all lines. Those shown are in effect on the Illinois Central, and up to and including 170 miles are the same as those published by the Mobile & Ohio, New Orleans & Northeastern, St. Louis & San Francisco, and Gulf, Mobile & Northern. Beyond 170 miles the rates are lower than shown on the Yazoo & Mississippi Valley, Mobile & Ohio, and the Gulf, Mobile & Northern, the other lines mentioned not maintaining rates for the longer distances. The rate on the Y. & M. V. for 300 miles is $2.93, and on the G., M. & N. $2.60.

[4] East of the Mississippi River.

[5] From Chattanooga, Tenn., to Southern Railway stations; there are other scales in effect in the State that are on a higher basis.

[fol. 46] The carriers attempt to show that their scale is lower than the average of the intrastate rates in Texas, Missouri, Oklahoma, Arkansas, and Louisiana west of the Mississippi River. The shippers' challenge the correctness of the Arkansas and certain of the Louisiana rates. It appears that the Royster scale is higher than the average of these intrastate rates, except for 180 miles and over and the shorter distances of 10 miles and under. The rates in Texas, Arkansas, and western Louisiana are, as a rule, lower than the proposed scale for distances of from 15 to 170 miles, and the rates in Missouri are lower in most cases, except for the shorter distances up to 40 miles. In Oklahoma, where a higher basis is maintained, there was but one fertilizer manufacturing plant in 1924 and the estimated consumption amounted to but 3,000 tons.

The intrastate rates of the States north of the Ohio River and of New York, Pennsylvania, Michigan, and Wisconsin were also exhibited to show the relative reasonableness of the Royster scale. These rates are, in many cases, the sixth-class rates. The Royster scale is lower than those shown, except in Illinois for distances over 50 miles. At 100 miles the Illinois scale is 39 cents under the Royster scale rate for that distance, and at 300 miles, 75 cents under. The record indicates, however, that in official territory fertilizer moves to quite an extent on specific commodity rates, and many of these, as well as the class rates, are blanketed over rather extensive groups.

The carriers cite many rates from various manufacturing points to destinations in official territory. They are far too numerous to set out in any detail but are generally higher than the Royster scale, and often substantially higher. The following examples are fairly representative:

"The term "shippers" as used in this report should be understood to include the agricultural, manufacturing, and other interests as distinguished from the carriers.

[fol. 47]	Distance, miles	Rate	Keyser scale
From Baltimore, Md., to—			
Harpers Ferry, W. Va.	80	$3.70	$2.25
Harrisburg, Pa.	96	3.20	2.59
Martinsburg, W. Va.	98	3.80	2.59
Cumberland, Md.	176	4.70	3.27
Manunka Chunk, N. J.	204	4.40	3.49
Grafton, W. Va.	278	[1] 5.00	3.94
Ridgway, Pa.	326	[2] 4.50	4.39
East Liverpool, Ohio	361	5.10	4.62
Cadiz, Ohio	403	6.40	4.95
Lockwood, Ohio	405	5.80	4.95
Meadville, Pa.	429	5.10	[3] 5.40
Zanesville, Ohio	453	6.40	5.18
Port Henry, New York	453	6.00	[3] 5.52
From Philadelphia, Pa., to—			
Leslie, Md	50	2.60	1.80
Aberdeen, Md.	65	3.10	2.03
Lansdowne, Md.	103	3.20	2.59
Martinsburg, W. Va.	106	4.40	3.38
Green Springs, W. Va.	260	5.00	3.83
Cumberland, Md.	272	5.00	3.94
From Syracuse, N. Y., to—			
Geneva, N. Y.	51	2.30	1.92
Fonda, N. Y.	104	2.90	2.59
Albany, N. Y.	158	3.20	3.15
Germantown, N. Y.	196	3.80	3.38
Peekskill, N. Y.	249	4.30	3.72

[1] This rate is blanketed from Keyser, W. Va., 199 miles, to Long Run, W. Va., 319 miles.

[2] This rate is blanketed over the entire Renovo division of the Pennsylvania from Renovo, Pa., to Erie, Pa., involving hauls of from 249 to 445 miles.

[3] Joint-line rates.

Supplementing the above, the carriers cite a number of decisions in which we have said, in substance, that more favorable transportation conditions and greater traffic density north of the Ohio River warrant a lower level of rates in that territory than in the South.[7]

[fol. 48] The shippers combat this showing by exhibiting the fertilizer rates that were in effect in the North prior to the 5 per cent increase, as compared with the rates prescribed in the Royster *case*, to show that the respective levels were as of that period about the same, and that in many cases the rates in the North were the lower. The shippers further show that many of the rates on fertilizer materials in official territory are lower at the present time than the Royster scale, and particular attention is directed to the rates on acid phosphate, this being frequently used as a complete fertilizer in northern territory. The rates on these materials are blanketed over long distances: For example, the rate from Baltimore of $4.60 on nitrate of soda applies for distances of from 217 to 421 miles, and the rate of $3.20 on acid phosphate from Baltimore to destinations in trunk-line territory applies for distances of from 146 to 433 miles. The joint-line rates in this territory are on the same level as the single-line rates. Under the Royster scale the rates for these distances are as follows:

146 miles	$2.93	$3.27
217 miles	3.49	3.83
421 miles	5.07	5.40
433 miles	5.07	5.40

It will be seen from the foregoing that the joint-line Royster scale rate of $5.40 for 433 miles exceeds the rate on acid phosphate in trunk-line territory for a similar distance by $2.20. The shippers do not contend that the general level of fertilizer rates in the North at present lower than the Royster scale, but concede the reverse to be true. They urge, however, that this has been brought about by the greater aggregate general increase allowed in official terri-

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[7] Sugar Cases of 1922, 81 I. C. C. 448, 469-470; Commercial Club of Carrollton v. Director General, 55 I. C. C. 697, 700; and others.

tory, beginning with the 5 per cent increase in 1915, and that the relatively high level of fertilizer rates in that territory may also be accounted for by the comparative unimportance of the traffic in the past. In Ohio, Indiana, Illinois, and Michigan only 379,000 tons were consumed in 1909. However, the use of fertilizer in central territory has been increasing, so that in the States named 655,000 tons were consumed in 1924. There is also pending a complaint, No. 15912, filed by the Ohio Farm Bureau Federation, seek-[fol. 49] ing 80 per cent of sixth class as the basis for rates on fertilizer in central territory, and a similar complaint, No. 16494, filed by the National Fertilizer Association, seeking 75 per cent of sixth class as the basis between points in central territory and between that territory and trunk-line territory. The former basis results in rates somewhat higher than the Royster scale for 90 miles and under, and lower for other distances. At 100 miles the Royster scale rate is $2.59, while 80 per cent of the sixth-class rate in central territory for that distance is $2.40. Counsel for the carriers sought to develop why, if 80 per cent of sixth class is deemed proper in central territory, that basis should not also be used in the southern territory. It appears that sixth class is relatively a much lower class in central than in southern territory, and that the class rates are better adapted in the former than in the latter to the movement of carload traffic in volume. Southern Class Rate Investigation, 100 I. C. C. 513, 109 I. C. C. 300.

Numerous comparisons were submitted by the carriers contrasting fertilizer rates in Tennessee with the Royster scale. The latter are lower in some cases, but higher in most. The increases would occur mainly in the rates reduced under our findings in Rates to, from, and between Points South of the Ohio River, 64 I. C. C. 306, decided November 15, 1921, hereinafter called I. and S. 1303. As compared with the rates in effect prior to that revision the proposed scale would largely result in reductions rather than increases. In the case of rates from Memphis and the Ohio River crossings to Mississippi Valley points the proposed rates are, in most cases, considerably higher than the present rates which resulted from I. and S. 1303, but the carriers contend that the rates in that proceeding were not prescribed as reasonable maximum rates but primarily

to remove fourth-section departures. Attention is directed to statements to that effect in Jackson Paper Co. v. A. & V. Ry. Co., 87 I. C. C. 529; St. Louis Merchants Exchange v. A. & R. R. R. Co., 87 I. C. C. 547, and other cases. In I. and S. 1303 a base rate of $5.80 was prescribed on fertilizer from St. Louis, Mo., and Louisville, Ky., to New Orleans as a maximum, the rate to-day being $5.20. The distance [fol. 50] to New Orleans from St. Louis is 698 miles, and from Louisville 747 miles.

The carriers exhibited many rates east of the Mississippi River, principally in southern territory, in effect on various commodities, for the purpose of showing that the revenues per car and per car-mile are in almost every instance higher than on fertilizer under the proposed rates, based on the average loading. These comparisons include rates on coal, cement, crushed stone, slag, scrap iron, asphaltum, blackstrap molasses, sulphuric acid, roofing slate, salt petroleum, manufactured iron, asphalt rock, lumber, wall plaster, and pig iron. Not only are the rates shown, in many cases higher than the Royster scale, but on every commodity but two, coal and crushed stone, the car-mile earnings are greater. And even on coal and crushed stone, the earnings are, in the majority of cases, higher than under the Royster scale. In the following tables are shown what are believed to be representative rates on three of the commodities mentioned for distances of approximately 50, 100, 150, and 200 miles. The Royster scale rates shown are for single-line hauls, except where referenced "J" to indicate joint-line service:

[fol. 51]

Coal from—	To—	Distance	Rate	Car-mile revenue[1]	Royster scale	Car-mile revenue[1]
Jellico, Tenn	East Bernstadt, Ky	50	$1.13	109	$1.80	87
Birmingham, Ala	Tuscaloosa, Ala	55	1.19	104	1.92	85
Do.	Bluffton, Ala	104	1.35	62	2.59	60
Western Kentucky	Madison, Tenn	104	1.35	62	2.59	63
Birmingham, Ala	Columbus, Ga	157	1.92	62	3.15	42
Glenmary, Tenn	Asheville, N. C.	199	2.54	62	(J) 3.72	46
Clifty, Tenn	Tennessee City, Tenn	198	2.03	45	3.38	42

[1] The car-mile earnings on coal are based on average loadings of from 44.4 to 51 tons, and those on fertilizer of from 21 to 24.5 tons.

[fol. 82] 513

Cement	Distance	Rate	Car-mile revenue	Royster scale	Car-mile revenue
C. F. A. rates[1]	50	$1.60	[2] 128	$1.80	[3] 83
North Carolina intrastate scale	50	2.00	[4] 144	1.80	[3] 83
Do.	100	2.60	[4] 94	2.59	[3] 60
C. F. A. rates[1]	100	1.90	[2] 76	2.59	[3] 60
Norfolk, Va., to Tarboro, N. C	100	2.70	[5] 72	2.59	[6] 54
Norfolk, Va., to Kinston, N. C	149	3.20	[6] 58	2.93	[6] 41
North Carolina intrastate scale	150	2.80	[4] 67	2.93	[3] 45
C. F. A. rates[1]	150	2.30	[2] 61	2.93	[3] 45
C. F. A. rates[1]	200	2.50	[2] 50	3.38	[3] 39
North Carolina intrastate scale	200	3.00	[4] 54	3.38	[3] 39

[1] Prescribed in Atlas Portland Cement Co. v. C., B. & Q. R. R. Co., 81 I. C. C. 1, from St. Louis and Hannibal, Mo., to points in Illinois, from Hannibal to points in Indiana, and from Buffington, Ind., to points in Illinois.

[2] Based on average loading of 40 tons.

[3] Based on average loading of 23 tons.

[4] Based on average loading of 36 tons.

[5] Based on average loading of 26.9 tons.

[6] Based on average loading of 21 tons.

[fol. 58] Sulphuric acid from—	To—	Distance	Rate	Car-mile revenue	Royster scale	Car-mile revenue[1]
Copper Hill, Tenn.	Andrews, N. C.	51	$2.45	231	(J)$2.14	97
Do	Marietta, Ga.	96	2.50	125	2.59	62
Do	Knoxville, Tenn.	107	2.10	94	2.59	56
Do	Rome, Ga.	152	2.50	79	(J) 3.38	51
Do	Macon, Ga.	205	3.10	73	(J) 3.72	42
Grasselli, Ala.	Hampton, Ga.	206	3.49	81	(J) 3.72	42

[1] The car-mile earnings on sulphuric acid are based on an average loading of 48 tons, and those on fertilizer on an average loading of 23 tons.

[fol. 54] In connection with the rates on sulphuric acid the carriers direct attention to the statement made in International Agricultural Corporation v. L. N. R. R. Co., 22 I. C. C. 488, 493, as follows:

As a result of the discussion the carriers seem finally to have taken the position that rates on sulphuric acid should be substantially the same as the fertilizer rate, upon the theory, apparently, that the completed fertilizer comes into competition with the acid.

To this idea we can not subscribe. So as the case shows, fertilizer does not compete with sulphuric acid nor is it manufactured at the point where this acid originates. The value of the fertilizer distributed throughout the south is from $15 to $20 per ton at the plant. The value of this sulphuric acid is $5 per ton at the point of origin. It is strictly a raw material and we think that distinctly lower rates should be applied for the transportation of these commodities from the point of origin to point where they are finally used than that upon the manufactured fertilizer.

It will be observed that most of the commodities with which comparisons were made load much heavier than does fertilizer, and that ton-mile earnings were not shown. Both ton-mile and car-mile earnings are significant and entitled to consideration in rate comparisons. Moreover the proposed rates are to apply, not only to fertilizers, but to fertilizer materials, many of which load quite heavily. A witness for the shippers testified that he had found, upon investigation, that shipments of materials to fertilizer plants averaged about 35 tons per car.

The carriers direct attention to the seasonal character of the fertilizer movements, practically 50 per cent of the yearly tonnage moving in March and April, which they assert is one of the most active traffic periods in southern territory. Because of this concentration they contend that the expense of handling the traffic is greater than it would otherwise be. In this connection the carriers say that at the more important manufacturing points it is necessary, at the beginning of the season, to assemble a considerable number of empty cars in anticipation of the movement. At Charleston, where there are 14 plants, some 600 cars are accumulated at the opening of the shipping season, and as many

[fol. 55] as 300 to 400 are kept on hand while the demand continues. A study made at that point from December, 1923, to April, 1924, inclusive, showed the average detention to be seven days per car. The expense of switching to and from the plants is said to be heavy, and attention is directed to the showing made by the carriers in South Carolina Fares and Charges, 60 I. C. C. 290, 301, to the effect that this expense at Charleston approximated $5.94 per car. These conditions seem to obtain principally at Charleston and Savannah, Ga., and to some extent at Norfolk, Va., and a few interior points, but the testimony was largely confined to Charleston. The shippers contend that the fertilizer movement occurs at a time when other traffic is not heavy and when there is to some extent a surplus of equipment. While the testimony does not support a finding that there is any dearth of other traffic during the fertilizer movement, neither does there appear to be a peak movement of any other commodity.

Some testimony was offered by the carriers with respect to the contaminating effect which mixed fertilizer has on the cars in which it is transported. They contend that because of the odor many commodities can not be loaded in cars that have been used for fertilizer until some time has elapsed and the cars have been cleaned. Tobacco and sugar are particularly susceptible to contamination, and grain and other commodities have at times been damaged. Just how serious this feature is in actual practice is not satisfactorily disclosed. The carriers emphasize and the shippers minimize its importance. The latter mention the many commodities that would not be affected, and assert that for the most part the materials have little or no offensive odor. However, it was stated by one of the shippers' own witnesses that about 70 per cent of mixed fertilizer contains tankage or fish scrap or both and has a decided odor.

The Shippers' Proposal

The shippers' case was presented largely by representatives of manufacturing organizations, members of the National Fertilizer Association. The Alabama Public Service Commission also took an active and important part in support of the rates proposed. Testimony was offered on

[fol. 56] behalf of the Kentucky Railroad Commission, a statement was made by one of the North Carolina commissioners, and helpful cross-examination was conducted by representatives of the Florida, Georgia, and Mississippi commissions. The shippers are at one with the carriers in urging uniformity in the rates; the predominant issue is with respect to their level. The shippers contend that we discard the Royster scale in Blackshear Mfg. Co. v. A. C. L. R. R. Co., 87 I. C. C. 654, involving rates on fertilizer from Blackshear, Ga., to points in Florida, where we said at page 662:

The cases * * * in which the Royster scale was prescribed or approved were decided on the records then before us and solely for the purpose of disposing of the very narrow issues which those cases presented. It does not follow that the same scale should be accepted as the final measure of rates to be applied generally throughout the Southeast or that the rates from Georgia to southern Florida should be constructed by superimposing upon that scale an increase to reflect the less favorable transportation conditions in southern Florida.

Attention is also directed to this further statement, at page 663 of that report:

It has been generally recognized for years that transportation conditions in the Southeast do not warrant any higher basis of rates than in the Southwest, and rates in the Southeast are in many cases lower than in the Southwest. The 9702 [Memphis-Southwestern Investigation, 77 I. C. C. 473] fertilizer scale was prescribed or approved in a comprehensive proceeding for application, intrastate and interstate, in Arkansas and between Arkansas, southern Missouri, and western Louisiana, and presents a fairer guide for determining maximum rates on fertilizer from Blackshear to Florida points than does the Royster scale which was originally prescribed for traffic moving between a comparatively few points in the Southeast.

These statements, it is urged, warranted the Alabama commission, when it had the matter of fertilizer rates before it in 1924, in accepting the scale prescribed in No. [fol. 57] 9702 as representing reasonable maximum rates in southwestern territory, and in finding that a scale somewhat

lower might appropriately be adopted east of the Mississippi River. The greater volume of fertilizer tonnage in Alabama was also given consideration. The Alabama commission accordingly prescribed rates which averaged 87.3 per cent of the single-line rates and 89.1 per cent of the joint line rates in No. 9702. But instead of adopting the minimum weight of 15 tons prescribed in that case on mixed fertilizer, the Alabama commission, because of the average loading in that State, adopted a minimum of 20 tons. Wherever the minimum on materials was less than 40,000 pounds it was increased to that weight, except in the case of cottonseed hulls where it was continued at 15 tons. The rates and the minimum weight which the shippers now propose are the same as, or based on, those prescribed by the Alabama commission and for representative distances are as follows:

	Single line			Joint lines		
	Shippers' proposed rate	Revenue per ton-mile	Revenue per car-mile[1]	Shippers' proposed rate	Revenue per ton-mile	Revenue per car-mile[1]
	Cents	Cents	Cents	Cents	Cents	Cents
5 miles	80	16	320	...	....	....
10 miles	90	9	180	120	12	240
25 miles	120	4.8	96	150	6	120
50 miles	145	2.9	58	175	3.5	70
75 miles	170	2.27	45.3	200	2.67	53.3
100 miles	195	1.95	39	225	2.25	45
150 miles	245	1.63	32.7	275	1.83	36.7
200 miles	295	1.48	29.5	315	1.58	31.5
250 miles	345	1.38	27.6	365	1.46	29.2
300 miles	375	1.25	25	395	1.32	26.3
400 miles	425	1.06	21.3	435	1.09	21.8
500 miles	475	.95	19	485	.97	19.4
600 miles	515	.86	17.2	515	.86	17.2
700 miles	555	.79	15.9	555	.79	15.9
800 miles	595	.74	14.9	595	.74	14.9
900 miles	615	.68	13.7	615	.68	13.7
1,000 miles	635	.64	12.7	635	.64	12.7

[1] Based on minimum carload weight of 40,000 pounds.

The scale is shown in its entirety in Appendix C and for convenient reference the No. 9702 scale is also shown.

While the shippers advocate strict adherence in general to their distance scale, they favor certain exceptions. Thus they believe that the various fertilizer plants in and around [fol. 58] Atlanta should be grouped, average distances from the group to be used in fixing the rates, and that similar

situations should be similarly treated. Neither do they believe that the scale should be applied on certain materials. For example, sulphate of ammonia is produced in southern territory only in the Birmingham district, and they suggest that rates on this commodity be competitively adjusted with rates from the northern steel mills.

One of the shippers' principal witnesses admitted that the rates which they propose are, with the exception of rates within Mississippi and for short distances in Georgia, lower than any existing fertilizer rates in southern territory that have been prescribed either by us or by State commissions. The low basis of rates in Mississippi is due, the carriers say, to two causes: (1) Two extremely low rates originally established by the carriers operating in that section to encourage agricultural development, and (2) to orders or suggestions of the Mississippi commission. Attention is called to the fact that for more than 25 years the only changes in the Mississippi fertilizer rates have been those occasioned by the general increases or reductions.

Many individual instances are shown by a witness for the Alabama commission where the shippers scale will result in increased rates. These include rates from the principal points in Georgia and from Chattanooga, Tenn., to destinations in Alabama, and from Nashville and Memphis, Tenn., to destinations in both Alabama and Georgia. Out of 69 rates shown from Atlanta, 41 would be increased and 27 reduced. Out of 74 rates from Nashville, 49 would be increased and 23 reduced. On the other hand, out of 62 rates shown from Athens, Ga., only 14 would be increased while 48 would be reduced. Taking the showing as a whole, it appears that of over 700 rates exhibited 46 per cent would be increased in amounts ranging from trifling sums to as high as $1.30. Similar data were submitted by other witnesses. While the shippers' exhibits show many specific rates that are higher than their scales, the attempt seems to have been only to prove that there are a goodly number of cases where rates are maintained on a lower basis than they are proposing, not that the general level is lower. Rates from St. Louis, Memphis, and Nashville to points in [fol. 59] Mississippi and to New Orleans and Mobile, established as a result of I. and S. 1303, are also compared with the shippers' scale. The rates shown from St. Louis and

Nashville are in all but two instances lower than the scale, but the latter is lower in most cases than the rates from Memphis.

The shippers further compare their scale with the rates on various commodities. Those on cabbage and potatoes, petroleum, cotton piece goods, and iron and steel articles are in general materially higher than the scale. The rates on livestock between points in North Carolina are slightly higher, as are also the rates on cement within Georgia and Alabama. Rates lower than the scale are shown to be in effect on cement from Birmingham to inter-state destinations; on lumber from Georgia points to Birmingham and Chattanooga, and from Alabama points to Atlanta, Chattanooga, Memphis, and Nashville; on coal from Dante, Va., to Carolina territory and from Jellico, Tenn. to southern points generally; on sand and gravel over various lines; and on brick from Chattanooga to Georgia points. The rates on lumber are, in many cases, not only lower than the scale, but, based on the carload minima, produce lower car-mile earnings. As in the case of similar comparisons offered by the carriers, the shippers' showing is not any way decisive. It merely goes to prove that there are rates on various commodities that are both higher and lower than the scales here proposed. The shippers admit, and in fact urge, that such comparisons are not entitled to great weight.

The carriers contend that the Alabama scale, the basis of the shippers' proposed rates, is unduly low and was influenced by intrastate rates fixed by the Georgia commission. In 1907 the Alabama Legislature passed a statute which, it is said, prescribed the same distance scale of rates on fertilizer as was then in effect in Georgia. This action, the carriers say, was taken without any public hearing and resulted in substantial reductions. The scale so prescribed, subject to the subsequent general rate changes, remained in effect until July 25, 1924, when the Alabama commission promulgated the present intrastate scale, resulting in a further average reduction of about 7 per cent.

[fol. 60] The answer of the shippers to the contention that the present Alabama scale was derived from admittedly low Georgia rates has already been indicated. It is in substance that the Alabama commission took as its guide, not

Georgia rates, but the No. 9702 scale prescribed by us for application in the Southwest. It is shown that in the Blackshear case we, ourselves, prescribed the No. 9702 rates from Blackshear to points in Florida on and north of the Jacksonville-River Junction line for distances up to 240 miles, and that even to points 155 miles south of Jacksonville the rates were made but 10 cents higher than that scale. It must be admitted, the shippers say, that transportation conditions from southern Georgia into Florida are much less favorable than within Alabama, and the above distance of 240 miles well exceeds the average haul in the latter State.

As the position of the shippers is understood, not so much stress is laid on rate comparisons to sustain their scale as on the economic advantages accruing through the use of fertilizer, and the absolute need for its use if southern agriculture is to be at all successful.

The vice president of the American Farm Bureau Federation stated that organization's position as follows:

> We * * * respectfully ask the Commission to take into account the fact that in its work of gradually remaking the freight rate structure in the country the Commission should give a fair regard to the peculiar uses of different articles and so distribute the total transportation burden as will impose a fair relative part upon agriculture. In other words, in considering the proper disposition of this case involving as it does an article of direct importance in agriculture we urge the Commission to find from the evidence the extent to which sound national economy would justify the making of as low rates as consistently can be done on this particular article.

From the foregoing it is not to be understood that the shippers are urging the financial necessities of the southern farmers. Counsel states upon brief that our conclusion need not—

> depend on any thought that Southern agriculture is undertaking to secure or expects a subsidy in the way of lower [fol. 61] transportation charges upon fertilizer than would otherwise be warranted by sound consideration of economics and logical rate making.

While the condition of agriculture is not stressed as a ground for the special treatment of fertilizer rates, it is nevertheless of interest to note the testimony offered by the agricultural statistician of the Alabama extension service, who is also connected with the Federal Government. This witness testified that in 1924 the farmers of Alabama lacked $34,000,000 of receiving the full wage rate paid to farm workers, or about $130 per farm. In Georgia the farmers lacked $112,000,000, or about $350 per farm. In contrast the farmers of Texas and Oklahoma not only received the full wage rate but a profit besides, amounting to $81,000,000 in the former State and to 84,000,000 in the latter. In those States it appears that the soil now requires little or no fertilization; and it was the view of this witness that if the southeastern farmer expects to compete successfully with cotton raisers in Texas and Oklahoma it will be necessary for him to increase his yield per acre substantially, which can be done in not better way than by greater use of commercial fertilizers. It is his belief that around 4,000,000 tons of fertilizer could be profitably used in Alabama alone, provided it could be bought at a reasonable price, instead of the 580,000 tons used in 1925. In this connection the shippers contend that since the item of labor is comparatively small in the manufacture of fertilizer, it is chiefly the combined cost of transportation, raw materials, and selling which controls the prices.

The carriers minimize the importance of the freight charges so far as the farmer is concerned. They state, first, that the credit price of fertilizer exceeds the cash price by from 25 to 33⅓ per cent, and that many of the smaller farmers purchase on the credit plan. They point out, further, that the average price of fertilizer in southern territory for 1925 exceeded that for 1924 by nearly $4 a ton, resulting in an aggregate increase in price, based on total consumption, of nearly $18,000,000. Yet, regardless of this price increase, the consumption on the cotton in 1925 exceeded that in 1924 by over 200,000 tons. It is the carriers' position that any thinkable cut in freight rates would [fol. 62] amount to so little per farm that it would have no effect either upon the use of fertilizer or upon the farmers' prosperity. Assuming that the shippers' scale were adopted instead of the carriers,' resulting in a rate for a 100-mile haul 64 cents lower, on a farm of 100 acres using

345 pounds of fertilizer per acre, the average in South Carolina in 1924, the lower rate would effect a total saving of $11.04. This figure does not, however, take into consideration any reduction in the price of fertilizer which the lower basis of inbound rates on materials might have a tendency to bring about. The carriers direct attention to the testimony of the vice president of the American Farm Bureau Federation that—

* * * no effort is here being made to say that the volume of fertilizer to be consumed would be greatly more or less, dependent upon the measure of freight rate levels which will result from this proceeding.

The carriers further urge that even if the freight rates were reduced, little or no benefit would reach the farmer. This view has considerable support, somewhat negative in character, in the record. There is at least little to show that the course of fertilizer prices to the farmer has in the past been materially influenced by changes in freight rates. It appears that the delivered price of fertilizer at any interior point is determined by the f. o. b. price at the nearest port plus the freight rate thence to the particular destination. Freight rates are thus a factor in the prices paid by the farmers, but any reductions in those rates might and, the carriers contend, would be offset by changes in the f. o. b. port prices.

The carriers state, likewise with considerable support of record, that the price of crops for the preceding season is the controlling factor in determining the amount of fertilizer used in any year; that when the price of cotton, for example, is high the farmer uses more fertilizer the next year, and that when there is a crop failure or a low price is received he uses less. This is admitted by the agricultural statistician of the Alabama extension service to be an important factor in determining fertilizer consumption.

In rebuttal of the contention that the farmer will not benefit from a freight-rate reduction, shippers state that farm organizations are gradually springing up throughout [fol. 63] the South, and that through cooperative buying, which these organizations made possible, the farmer not only obtains his fertilizer at a lower price but would in most cases secure directly the benefit of any reduction in the delivery charges. It was testified that the Alabama Farm Bureau Federation purchased and distributed to

its members in the spring of 1925 approximately 81,000 tons of fertilizer of all kinds. Most of this tonnage consisted of fertilizer materials which the farmers themselves mixed, a practice resulting in considerable economy.

Carload Minimum Weight

As already stated, the shippers propose in connection with their scale a carload minimum of 20 tons instead of the 15 tons proposed by the carriers. It is understood that their proposal includes also increasing the minimum of all materials, where now lower, to this weight, with the exception of cottonseed hulls. This increase in minimum, they urge, should be taken into consideration in fixing the rate level. The higher minimum is now applicable on intrastate traffic in Alabama, and it has the approval of the vice president of the American Farm Bureau Federation.

Attention is directed to the fact that at the time the 15-ton minimum was adopted in the Royster case the average loading was but 17 tons, while at the present time it is considerably in excess of that figure. In March, 1925, the average loading of mixed fertilizers from 18 of the principal manufacturing points in the South ranged from approximately 21 to 29 tons. An analysis of these figures shows that out of a total of 3,934 cars, 1,087 loaded below 20 tons and the balance above, although in most of the South the minimum is now 15 tons and in some cases as low as 10 tons. By the carriers' own showing the average loading in 1923-1920 on Class I roads in southern territory was a little over 23 tons. Based on the increase of 6 tons over the average loading in 1913 it is estimated that is required 61,000 less cars in 1925 to transport the 4,000,000 tons of fertilizer consumed in the South in that year than it would have required if the average loading had remained as in 1913. The loading seems to be limited [fol. 64] chiefly by commercial needs and conditions. It was testified that it is physically possible, although perhaps not feasible, to load to the full capacity of the car.

The carriers question the wisdom of increasing the minimum. They seem to fear that many farmers will object and that considerable discontent will result. Aside from the carriers the only specific objections of record to a 20-ton minimum came from three manufacturers in

Florida and from a farmer of Sumter, S. C., who stated that the users in his section object to a greater minimum than 15 tons. This objection is apparently based on possible difficulty in getting a sufficient number of individuals to combine to order the larger carload.

The increase in minimum, so far as fertilizer materials are concerned, would apparently cause little change in trade practices. The minima proposed for materials by the carriers, which are those carried in the current consolidated classification, are in many instances 20 tons or higher, and the average loading of materials is said to be around 35 tons. The principal materials, such as sulphate of ammonia, dried blood, cottonseed meal, acid phosphate, potash salts, and tankage, now have a 20-ton minimum. Nitrate of soda is also accorded a minimum of 40,000 pounds in the classification, but it is stated that there is a considerable import movement from the south Atlantic ports to South Carolina destinations on a minimum of 10 tons, and that there is some movement of materials on this basis between other points in the same general section.

It would seem that the time has come when an increase in the carload minimum on fertilizers may properly be made. The record contains no pronounced objection to the higher minimum, and the attitude of the shippers is, in general, favorable. The 20-ton minimum, if adopted in Florida, might, at first, cause some inconvenience. Any-quantity rates are now in effect on intrastate shipments of mixed fertilizer in that State, and it is possible that some little time might be required for the users to accommodate themselves to the carload basis. A manufacturer at Orlando, Fla., gave it as his opinion that a 20-ton minimum would work a hardship on many small truck growers who would be unable to use that amount. [fol. 65] In the Blackshear case, supra, involving rates into Florida, a minimum of 30,000 pounds was prescribed, and no complaint on that score has come to our attention. There seems to be a willingness in that State to adopt on mixed fertilizer at least that carload minimum, and a minimum of 20 tons on materials.

While referring to the Florida adjustment it should be said that the rates on materials within that State are on the basis of 75 per cent of the fertilizer rates. The rela-

tionship was fixed by the Florida commission in order that manufacturers at inland points might more readily compete with plants at the port, and it is urged that any decrease in the spread would be likely to force the interior manufacturers out of business. The intrastate situation in Florida is not directly involved in this proceeding. Except on certain materials within North Carolina which, subject to a 25-ton minimum, are accorded rates 90 per cent of those on fertilizer, and except on kainit and acid phosphate within Georgia, which have a like concession, no other situation is brought to our attention where the materials are granted rates lower than apply on fertilizer.

A representative of the Florida East Coast urged a higher basis of rates in connection with traffic into Florida than for the rest of southern territory, and also sought for his road rates somewhat higher than on other lines. He submitted no specific proposal other than that interstate rates to points on his lines should be maintained on the basis of the combination over Jacksonville, Fla. The record does not warrant special treatment of interstate shipments of fertilizer or fertilizer materials to and from Florida points.

Proposal of the Short Lines

The American Short Line Railroad Association, on behalf of its southeastern members,* seeks a special basis of rates for these short lines because of their poor financial condition and limited traffic resources. The general basis of interstate rates on fertilizer to points on these lines is now the full combination over the trunkline junction point. [fol. 66] Intrastate rates are made, as a rule, on the combination basis less certain percentages, which vary in the different States. In Georgia the full combination obtains. In Alabama, on the other hand, joint rates between trunkline and short-line points are made 10 per cent higher than the joint trunk-line scale. The local short-line rates in that State are 20 per cent higher than the rates of the standard lines, and for joint short-line hauls the same differentials are added as obtain between the single and joint standard-

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* See Appendix D for a list of the lines referred to in the record.

line rates. This Alabama adjustment is the one which the shippers propose for general application.

The short lines seek approval of the full combination basis, but in any event not less than the Royster scale, single line or joint line, as the case may be, plus an arbitrary of 50 cents, this arbitrary to accrue solely to the participating short-line carrier.

There are other roads, not members of the Short Line Association or individually represented, which likewise seek special treatment. These are:

1. The Columbus & Greenville, 167 miles long, extending from Columbus to Greenville, Miss. It desires to maintain the full combination basis, with local rates not less than the Royster scale.

2. The Gulf, Mobile & Northern and its subsidiary, the Birmingham & Northwestern, the former extending from Mobile, Ala., northerly through Mississippi to Jackson, Miss., 408 miles, and the latter extending from Jackson to Dyersburg, Tenn., 48 miles. These roads desire to maintain rates to their local stations made 50 cents higher than the scale adopted for general application.

3. The Alabama, Tennessee & Northern, extending from Calvert, Ala., northward to Reform, Ala., 186 miles, and its subsidiary, the Alabama & North Western, extending from Pine Hill, Ala., to Coxheath, Ala., 24 miles. These roads likewise ask for an arbitrary of 50 cents over the Royster scale.

4. The Atlanta, Birmingham & Atlantic, extending from Brunswick, Ga., to Birmingham, Ala., and which, with its branch lines to Atlanta, Thomasville, and Waycross, Ga., is 640 miles long. This carrier does not now contemplate [fol. 67] higher rates over its line than may be prescribed as the standard scale, but it seeks the right to carry higher rates if it finds it necessary in the conduct of its business.

5. The Norfolk Southern, the main line of which extends from Norfolk, Va., to Charlotte, N. C., 400 miles. Of its total main-line and branch-line mileage of 932 miles, 115 miles are in Virginia and the balance in North Carolina. This carrier seeks rates made 10 per cent higher than the Royster scale for single-line traffic, with the same differen-

tials for joint-line traffic as are proposed by the carriers for general application.

6. The Carolina and the Kinston-Carolina; the former extending from its connection with the Norfolk Southern at Kinston, N. C., northward to Snow Hill, N. C., 15 miles, and the latter extending from the same junction point southward to Beulaville, N. C., 23 miles. The rates of these lines were fixed by the North Carolina commission approximately 50 per cent higher than the Royster scale, and they desire to continue this basis, with joint-line rates made full combination over their junction with the Norfolk Southern.

Any detailed discussion of the situation with respect to the Association lines seems unnecessary. It has received consideration in other cases, including Southern Class Rate Investigation, supra, where, except in a few instances, the necessities of these short lines were recognized. They have been accorded special treatment by most of the States and, in general, the shippers seem to favor such treatment. In 1922, according to an exhibit filed by their representative, many of these carriers had a deficit in net railway operating income and comparatively few had good earnings.

Of the Association lines it appears that the Tampa & Gulf Coast is controlled by the Seaboard Air Line and that its earning in 1924, as the result of its being a part of a through route, approximated 10 per cent of the book value of its property; that the East & West Coast, the Florida Central & Gulf, and Tampa & Northern are likewise subsidiaries of the Seaboard and participate in continuous-distance rates in connection with that carrier; and that the Live Oak, Perry & Gulf is controlled through stock ownership [fol. 68] by the Atlantic Coast Line and has had excellent earnings. These five lines were refused special treatment in the Southern Class Rate Investigation, supra.

Little evidence was submitted with respect to the financial needs of the Alabama, Tennessee & Northern. It asserts that it operated at a deficit in 1924, but the Alabama commission contends that, if its accounts had been kept in accordance with our regulations, its earnings would have been shown to be at least 5.75 per cent of the tentative value which we have assigned to its property. This is disputed by the carrier.

The Atlanta, Birmingham & Atlantic is now in the hands of a receiver, and its net railway operating income in 1924 was $263,829. After deducting interest on funded debt and other nonoperating expenses, it showed a deficit of $244,901 for that year. This carrier was accorded special treatment in the Southern Class Rate Investigation, so long as it "remains independent of standard-line control," 109 I. C. C. 300, 309. An application of the Atlantic Coast Line for authority to acquire control of this carrier is now pending.

The Norfolk Southern now enjoys rates somewhat higher than the Royster scale on intrastate traffic in Virginia, in North Carolina for the shorter distances, and on certain interstate traffic unaffected by our findings in the Royster case. It was shown that for the years 1920 to 1924, both inclusive, its average operating ratio was 82.5 per cent, that its net railway operating income averaged $802,942, and that the average return on its total investment of over $35,000,000 was 2.24 per cent. Its net railway operating income per mile of line for 1923 was $1,468 as compared with $3,374, the average for the entire southern region. No one opposed a higher basis of rates for this carrier than that accorded the standard lines.

The Carolina and the Kinston Carolina are controlled through stock ownership by the Norfolk Southern, but it was testified that they had never been operated as an integral part of the latter company and that their operating officers are not the same.

The Columbus & Greenville and the Gulf, Mobile & Northern, together with its subsidiary, the Birmingham & Northwestern, submitted evidence showing that their earnings have not been favorable.

[fol. 69] Before discussing the section 13 cases brought against the intrastate rates in Alabama, Georgia, and South Carolina, and certain exceptions to the general adjustment, it seems desirable to reach a conclusion as to the proper level of rates for general application in southern territory. In this connection a review of the traffic test is essential.

The Traffic Test

This test was made by the carriers at our request for the purpose of determining as nearly as possible the effect

upon their revenues, not only of the Royster scale, but of the shippers' scale as well. The months of March and April, 1925, were selected for the test throughout the territory, except in Florida, where February was taken. These months, it was believed, cover the height of the fertilizer movement in the respective sections, and embrace practically 50 per cent of the total movement for the year. The actual figures of the test, as shown below, should be doubled to arrive at approximate results on a yearly basis. The figures cover not only mixed fertilizers but fertilizer materials both domestic and imported. The movement of imported materials during the test period amounted to about 12.5 per cent of the total tonnage.

It is shown that of the total tonnage of fertilizer and materials, amounting to 3,189,819 tons, 70 per cent moved for distances of 150 miles and less. Of the single-line traffic, one-half moved for distances of 85 miles and less, and one-half of the joint-line traffic moved less than 140 miles. These figures bear out testimony of record. Thus it was testified that the average haul of fertilizers from the important manufacturing points in southern territory ranged from 40 miles from Hartsville, S. C., to 181 miles from Charleston, S. C. It is agreed that the average haul of materials substantially exceeds that of fertilizer. For example, it was shown that from 13 plants located at 10 points in Alabama the average outbound haul was 51 miles, while materials moved inbound to the same plants an average distance of 355 miles. The inbound hauls, of course, vary considerably, depending on the location of the plant with respect to the principal source of its raw materials.

The test showed that 2,154,422 tons, or 67 per cent of the total, moved single line, and 2,189,254 tons, or about 69 [fol. 70] per cent, moved intrastate. Of the total revenue of $7,947,908, almost 60 per cent, or $4,753,932, accrued on intrastate traffic.

The foregoing data do not take into consideration Florida traffic, either intrastate or interstate. As heretofore, indicated, the Florida intrastate rates on mixed fertilizer are on an any-quantity basis, and for the purpose of the traffic test all shipments which loaded 10,000 pounds or over were considered carload lots and so rated, the revenue being determined on the actual weight. Through this segrega-

tion 29,840 tons moving intrastate were rated as carload shipments and 5,070 tons as less than carloads. The traffic so rated as carload moved in 1,817 cars, averaging a little over 16 tons to the shipment. The interstate carload traffic amounted to 10,600 tons, or about 26 per cent of the total carload tonnage. The total revenue on the carload traffic was $122,586, of which $40,489, or one-third, accrued on interstate shipments.

The test shows that for the period covered the Royster scale would result in an increase in revenue, exclusive of Florida, of $834,285, which on a yearly basis would amount to about $1,668,000. As applied to interstate traffic alone, the Royster scale would result in additional revenue of about $420,000 for the year, or approximately 25 per cent of the estimated total. The proposed rates applied to the Florida tonnage for the month of February showed an increase in revenue of $17,097. The record is not clear as to what percentage of a year's business this showing of one month represents, but it is probably safe to assume that it is less than one-half of what the result would be for a year. In view of the fact that the proposed rates approximate the present intrastate rates in Florida up to 170 miles, being in a number of cases even lower than the Florida scale, it is probable that a substantial amount of the increase shown in that State is due to the fact that the carriers' proposal places fertilizer materials on the same rate basis as fertilizer, the former now being accorded in Florida rates made 75 per cent of the latter. The carriers call attention to the showing made, that of the total increase exclusive of Florida, a little over one-fourth, or $210,729, would accrue on traffic delivered at destinations on the so-called short lines. Upon such traffic they added an arbitrary of 50 cents to the scale rates.

[fol. 71] The carriers estimate roughly that the shippers' scale would result in a reduction in their revenues of not less than $636,146, or $1,272,000 on an annual basis. On brief, counsel for the Alabama commission, although admitting that some revenue reduction would be likely to occur under the shippers' scale, question the carriers' estimate. They point to the fact that the estimate includes $147,000 yearly loss to the Norfolk Southern. This carrier, it will be recalled, is asking for special treatment. It

appears that 61 per cent of the total tonnage delivered by the Norfolk Southern during the test period consisted of North Carolina intrastate shipments, on which rates somewhat higher than the Royster scale now obtain. The Alabama commission does not oppose special treatment for this carrier, and on the assumption that it will be accorded concludes that the estimated reduction in revenue would not take place, or at least would be nominal, thus substantially diminishing the gross estimated reduction under the shippers' scale.

A factor which must be given weight in considering the estimated loss under the shippers' scale is the treatment to be accorded traffic moving over short lines, and over trunk lines and short lines jointly. In estimating the loss it is understood that the carriers applied to their traffic-test tonnage the basis for short lines proposed by the shippers, which would result in lower revenue on all single-line shipments up to 150 miles, and on all joint trunk-and-short-line shipments up to 480 miles, than would accrue under the shippers' standard-line scales plus a short-line arbitrary of 50 cents. For example, it is shown that for the block of 111-120 miles, 34,000 tons of fertilizer moved in joint-line service in connection with short lines. Using the shippers' trunk-line scale for 120 miles, plus a short-line arbitrary of 50 cents, produces a rate 25 cents higher than the shippers' proposed joint scale for trunk and short lines. This would yield for this single mileage block about $17,000 more revenue per year than estimated.

The Rate Level for the Future

The salient points made by the carriers and shippers in support of their proposed scales are summarized below, with brief comments.

[fol. 72] 1. The carriers urge that their scale is the same as that which we finally approved, after consideration in three successive reports, in the Royster case and prescribed in certain subsequent cases. While this is true, we have in this proceeding a much more comprehensive record. It further appears that one of the reasons for approving, in the third Royster report, a lower scale than had been approved in the two previous reports was an increase in the

carload minimum from 12 tons (10 tons in the first report) to 15 tons. The shippers are here proposing a minimum of 20 tons.

2. The carriers show that their scale is in general lower than the prevailing rates on fertilizer in official territory. Certain of the latter rates are now before us in pending proceedings. Without expressing an opinion as to their level, the record here shows that the volume of fertilizer movement is materially less in official than in southern territory. The rate structures of the two territories also differ radically. In official territory class rates are relatively low and commodity rates, in general, relatively high. The reverse is true in southern territory. Southern Class Rate Investigation, supra. Much of the fertilizer movement in official territory is on class rates, but apparently none of the movement in southern territory is now, or ever has been, on such rates.

3. The carriers show that their scale is lower than many existing interstate rates on fertilizer in southern territory, and they assert that such increases as it would bring about would be largely confined to intrastate traffic, the rates on which they say are unduly depressed. The relation of their scale to the present level of fertilizer rates in southern territory has been clearly indicated by the traffic test. That test showed that, exclusive of Florida traffic, aggregate revenues would be increased by the Royster scale about 10.5 per cent. The increase would be about 6.6 per cent on interstate traffic and about 13 per cent on intrastate. It appears, however, that increases in the case of interstate traffic would be chiefly in the territory west of the Appalachian Range and south of Kentucky.

4. The carriers show that their scale would produce lower car-mile earnings, and in some cases rates lower in amount, [fol. 73] than many rates for similar distances in southern territory on commodities having values as low as or lower than the value of fertilizer. In general, the commodities selected for comparison load more heavily than fertilizer, and a comparison of ton-mile earnings would show reverse results. It is also a fact that the rate situation in southern territory with respect to a number of these commodities

is such that quite divergent comparisons may be obtained, dependent upon the particular rates used.

5. The carriers contend that while the revenue from fertilizer traffic is a very important item in their aggregate revenues, so that they would be materially affected by any reduction in fertilizer rates, southern farmers would at best receive an inconsequential benefit from such a reduction and perhaps no benefit at all. It appears to be a fact that a reduction in the freight rates on fertilizer, even if quite substantial, would result in a comparatively small saving per farm, even if all the benefit should accrue to the farmer. If a similar reduction on materials inbound to the manufacturing plants were translated into lower fertilizer prices, the saving per farm would be greater, but apparently in no event would it be very large. Whether or not the benefit of a reduction in freight rates would accrue to the farmer would seem to depend upon the character and degree of competition in the fertilizer industry.

6. The carriers contend that a reduction in fertilizer rates would not stimulate the use of fertilizer, since statistics show that the use each year depends not upon the price but chiefly upon the farmers' income during the previous year. It is true that the record furnishes some support for this conclusion, but it is important to note that such evidence is also proof of the thing margin upon which the farmers operate. The benefits from liberal use of fertilizer in southern territory are conceded by all, but the maximum use is apparently by no means as liberal as it might well be, and in many years the financial condition of the farmers is such that they can afford only a use falling well below the maximum.

7. While the carriers admit the economic advantage accruing from the use of fertilizer, they contend that this fact is no more a reason for subnormal rates on this particular [fol. 74] commodity than it is, by way of illustration, for rates below a reasonable level on farm implements, which also are essential to successful agriculture. So far as the Hoch-Smith resolution is concerned, they contend that it has no application in this case, since the record does not justify a conclusion that the condition of the fertilizer in-

dustry warrants a reduction, or that such a reduction is necessary to obtain freedom of movement for either fertilizer or agricultural products, or that it would be of material benefit in other ways to the farmer. The prescription of rates lower than they themselves propose would, the carriers further contend, be unlawful under section 1 of the interstate commerce act, and also under section 3 as an undue preference of a "particular description of traffic."

8. The shippers, like the carriers, contend that their proposed scale is supported by our previous decisions. They rely upon the scale which we prescribed for fertilizer traffic in southwestern territory in No. 9702 and upon that prescribed from such Georgia points into Florida in the Blackshear case. It is true that their scale was derived from these decisions by a logical process of reasoning, although certain of the premises, such as the assumed reasonable difference in level between southeastern and southwestern rates, were more or less arbitrary. However, the record in this proceeding is much more comprehensive, not only than that in the Royster case, but also than the record as to fertilizer traffic and rates in either of the proceedings above cited.

9. The shippers point out that the final decision in the Royster case was much less recent than the decisions in the cases upon which they rely, and that it was confined to Carolina territory. In that territory, they say, freight rates have been influenced by proximity to official territory, so that class rates have been in general somewhat lower than in other parts of southern territory and commodity rates in general somewhat higher. While the Royster scale prevails in Carolina territory, the shippers contend that their scale more nearly approximates the level of fertilizer rates, both interstate and intrastate, in the rest of southern territory. At present the highest level, they say, exists in [fol. 75] Carolina territory, the next highest in Kentucky-Tennessee territory, a lower level in Alabama-Georgia, and the lowest of all in the Mississippi Valley. In this connection they quote the following from the Southern Class Rate Investigation, 100 I. C. C. 513, 623:

A further argument advanced in favor of a concession in rates, in North Carolina at least, is the fact already men-

tioned that class rates in Carolina territory are now and for a long time have been relatively low compared with similar rates in other parts of southern territory. It is true that if class rates are placed upon a uniform basis in southern territory which will preserve existing revenues in the aggregate, North Carolina will lose where certain other States will gain. On the other hand, the evidence indicates that if a similar process is followed, as is probable, in the revisions of commodity rates in southern territory which are in contemplation, the results will be reversed.

The results of the traffic test tend to bear out the shippers' contentions in regard to the levels of existing fertilizer rates in the various parts of southern territory, although it also indicates that the shippers' proposed scale falls about 5 per cent below the present average.

10. The shippers lay stress upon the increase in carload minimum which they propose from 15 tons to 20 tons. They note the incongruity that such an increase should be favored, in general, by the shippers and opposed by the carriers. In Alabama, where the higher minimum has been put to the test, the record indicates that it has substantially increased average car loadings, to the carriers' advantage in economy and efficiency of operation. This has also been the effect of similar increases in the past.

11. While the shippers are not urging impoverished agricultural conditions as a reason for charity in fertilizer rates, they do urge that it is our duty, a duty which the Hoch-Smith resolution has emphasized, to distribute the burden of freight rates on sound economic principles. Such principles, they believe, will lead us to place the heaviest relative burden upon high-grade traffic of the luxury class and the lightest relative burden upon low-grade traffic in [fol. 76] essential or basic commodities, intermediate grades of traffic being treated accordingly. Tested by such principles, they assert that fertilizer is entitled to especially favorable treatment, particularly when due weight is given to its extraordinary importance to southern agriculture and to the fact that freight rates on the average account for at least 25 per cent of its cost to the farmer.

12. The shippers incidentally refer to the fact, shown of record, that the southern carriers are now enjoying a fair

degree of prosperity. Under the circumstances, they say, there is no ground for fear that a slight reduction in the level of fertilizer rates might impoverish the carriers. They also direct attention to the fact that, inasmuch as fertilizer factories are scattered widely thorughout southern territory the hauls from the plants to the farms are comparatively short, and movement by truck instead of by rail is entirely feasible. It would be a mistake, they believe, to adopt a scale of rates which would encourage such competition, which is continually growing in importance.

So much for the salient points made by the parties to the proceeding. In his proposed report the examiner recommended a scale somewhat higher than the shippers' scale and somewhat lower than the carriers'. Upon argument the carriers conceded that the scale so recommended would about maintain their aggregate revenues. But our decision can not properly be predicated solely upon an attempt to average existing rates and maintain revenues. It is here our duty to determine what are maximum reasonable rates and to prescribe such rates, whether the effect be to increase or reduce the carriers' earnings. The traffic test furnishes evidence as to the level of existing rates, both interstate and intrastate, on fertilizer in southern territory; but while this evidence is entitled to weight in arriving at maximum reasonable rates it is not controlling.

The doctrine that the burden of rail transportation should be distributed among the various kinds of freight with some regard for the economic needs of the country has always had recognition, in one way or another, in the rate structure. The familiar principle of "charging what the traffic will bear" or, as some prefer to put it, of "not charging [fol. 77] what the traffic will not bear," has no doubt had that result in some degree. The principle which has been quite generally recognized in public regulation, that the value as well as the cost of service is a factor entering into the determination of just and reasonable rates, has had a similar result. In another form the same thought seems to be predominant in the Hoch-Smith resolution. But the inevitable result of such a distribution of the transportation burden must be that some kinds of freight traffic, under just and reasonable rates, will earn materially less for the carriers than others.

There are manifest limitations to the doctrine. It may be conceded that we have no power to fix rates upon any kind of freight which will fail to produce some margin over operating cost. Moreover the fact that certain carriers are largely dependent upon a particular form of traffic and have little opportunity to recoup a deficiency in profit upon such traffic by recourse to higher rates upon other kinds must be taken into consideration. But here we are without evidence as to the cost of service, and it is not understood that the carriers contend that even the shippers' scale would result in operating loss. Nor does it appear that fertilizer traffic is the main reliance of any of the respondent carriers. So far as the record discloses the traffic of all is reasonably well diversified.

We have in the past made this statement as to fertilizer traffic:

Fertilizer is a low-grade traffic, subject to no great risk in transit and requiring no special service for its transportation in the sense that "special service" is generally understood. Its free movement and use is an auxiliary tending to produce and furnish a larger volume of traffic and thus promote the prosperity of carriers and their patrons, so that considering both commercial and transportation conditions, it is entitled to comparatively low rates. Virginia-Carolina Chemical Co. v. St. L. S. W. Ry. Co., 18 I. C. C. 49, 52-53; Meridian Fertilizer Factory v. V. S. & P. Ry Co., 20 I. C. C. 554, 555; Meridian Fertilizer Factory v. T. & P. Ry. Co., 26 I. C. C. 351, 353; and other cases.

Nothing of record makes any modification of that statement necessary. The carriers contend that, in fixing maxi- [fol. 78] mum reasonable rates, we can not lawfully take into consideration the fact that the use in industry of a particular commodity results in additional freight traffic—in other words, that the commodity is a traffic producer. It is unnecessary to pass upon that issue here. There are commodities of lower grade than fertilizer. For example, a witness for the Alabama commission conceded that fertilizer rates should be somewhat higher than those on sand and gravel, slag, crushed stone, coal, and commodities of that class. Yet it is of distinctly low grade, its value for the most part being well within $1,000 per car; there is little or no "special service" attendant upon its transportation, and few claims for loss or damage; and its free

and liberal use is of extraordinary importance to southern territory.

It may be that such a change in the level of fertilizer rates, up or down, as could reasonably be considered would in itself have comparatively slight effect upon the financial status of the southern farmer. But that does not alter the fact that upon sound economic grounds fertilizer is a commodity which should be leniently treated in distributing the burden of freight transportation. The need for continued progress in the use of fertilizer is so great and the degree of its use, as this record clearly shows, is so dependent upon financial considerations that all burdens associated with its use should be made as light as possible. In this connection it may not be amiss to say that if an increase in the carload minimum weight should have the effect of encouraging cooperation among farmers in the purchase and handling of fertilizer it would serve a most desirable end. The record furnishes strong reason for belief that the great excess of the credit price over the cash price and the necessity, under which many of the smaller farmers now labor, of purchasing on the credit plan is one of the major obstacles that impede the proper use of fertilizer. It also suggests that substantial economies are possible through the cooperative purchase and mixing of materials, aided by the advice of State and Federal agencies.

The effect of increased car loading, so far as the carriers are concerned, may be shown by comparing the car-mile earnings for representative distances under their single-[fol. 79] line scale and minimum of 15 tons with the similar earnings under the shippers' single-line scale and minimum of 20 tons:

	Carriers' scale	Shippers' scale
	Cents	Cents
5 miles	270	320
25 miles	88	96
50 miles	54	58
75 miles	42	45.3
100 miles	38	39
150 miles	29	32.7
200 miles	25	29.5
250 miles	22	27.6
300 miles	20	25

While it appears that the average loading of fertilizer in southern territory is now 23 tons or more, so that the actual car-mile earnings under the carriers' scale would be materially greater than those shown in either column of the above table, and while the carriers claim that the prescription of a minimum of 20 tons in place of the present 15 tons would not increase this average loading, the record indicates that an increase in minimum has in the past brought about a higher average loading and that such has been the effect of the 20-ton minimum recently established within Alabama.

An exhibit of record shows that in 1923 the average car-line revenue earned by all Class I roads in the southern district for an average haul of 214 miles was 25.6 cents, and that the average ton-mile revenue was 9.59 mills. In contrast, the car-mile earnings, upon the basis of the 20-ton minimum, under the shippers' single-line scale would be 29.4 cents for a 214-mile haul, and the ton-mile earnings would be 14.7 mills. Allowance should be made in this comparison for the fact that the 214-mile average haul in 1923 for all southern carriers is an average for individual roads and is thus based, in part, upon portions of through joint-line hauls for which divisions of through rates were received by the individual carriers, and also for the fact that it is based to some extent upon hauls over circuitous routes. But even if allowance be made for these facts, the compari- [fol. 80] son nevertheless serves to show that the shippers' scale is by no means so low, compared with the level of freight rates in general, as the carriers contend.

Carriers and shippers agree, with a single exception, that a uniform level of fertilizer rates is desirable throughout all of southern territory. The single exception is the Florida East Coast, which desires a somewhat higher level to and from points in the Florida peninsula. Considering all the circumstances surrounding this particular form of traffic and the general agreement upon this point, resulting in a paucity of evidence to the contrary, we think that the record supports one uniform level.

Carriers and shippers both acquiesced in the idea that the rates should be somewhat higher for joint-line than for single-line hauls. The carriers would maintain such a difference for all hauls, while the shippers would have it disappear at 500 miles. In the Southern Class Rate Investi-

gation, supra, we prescribed the same class rates for both classes of hauls, making the scale for this reason somewhat higher than it would have been if prescribed for single-line hauls only. In general the parties are in accord that whatever rule for computing distances is applied in connection with class rates shall be employed also for determining the rates here in issue. In our second supplemental report in the Southern Class Rate Investigation, 113 I. C. C. 200, decided July 19, 1926 we found that in computing distances the shortest routes should be used over which carload freight can be moved without transfer of lading, making the scale somewhat higher than if the "shortest workable" routes had been used as the measure. Carriers and most shippers agree that some definite rule for the computation of distances which may be applied without the exercise of judgment is desirable, inasmuch as it lessens the time and expense of preparing rates for publication and avoids controversies as to the proper rate-making distances. Unquestionably, also, there are many practical advantages in adopting a uniform rule for computing distances. When one basis is adopted and consistently adhered to, distances once computed may be applied for the ascertainment of rates on any commodity or class, where distance scales are employed.

[fol. 81] In a general way the same principle applies to the question of whether rates for joint-line service should be made higher than those for single-line service. If on one commodity arbitraries for joint-line service be employed, while on another commodity one scale is used for both single-line and joint-line service, the distance which determines the rate between particular points will often be different in one case from that in the other. There will also be like variations as between different commodities on which joint-line arbitraries are applied, depending upon the volume of the arbitrary as compared with the volume of the single-line rate to which it is added.

Manifestly where no additions are allowed for joint-line service and where short-line distances are used as the single scale should be correspondingly increased. As above noted, of the total fertilizer traffic covered by the traffic test, single-line rates were applied to 67 per cent. Joint-line arbitraries were therefore applied to only about one-third. It is also true that where joint-line arbitraries are used the

carriers in many instances do not secure the full amount of the arbitrary nominally applicable for any given distance, for often slightly longer single-line routes will determine the applicable rates. Under the circumstances the elimination of joint-line arbitraries will require a comparatively small increase in the single-line scale.

The record contains no evidence as to cost of service which furnishes material help in determining the proper progression of the scale. In the Royster scale the progression is now exceedingly ragged. The shippers' scale progresses 10 cents for each 5-mile block up to 25 miles, then 5 cents for each 5-mile block up to 100 miles, then 10 cents for each 10-mile block up to 260 miles, then 10 cents for each 20-mile block up to 500 miles, and for all greater distances 10 cents for each 25-mile block. It will be evident that the shippers' scale involves a drop of 50 per cent in the rate of progression at 25 miles, another like drop at 260 miles, and a drop of 20 per cent at 500 miles. Roughly, the rate of progression represents the charge for the line-haul service. Notwithstanding the lack of data in the record bearing upon the cost of service, it appears that there is no warrant for the conclusion that a reasonable [fol. 82] charge for the line-haul service immediately beyond 260 miles, for example, is one-half of a reasonable charge for the service immediately short of that distance. We are of the opinion that the drops in progression in the shippers' scale are too abrupt. In the scale found reasonable below we have adopted a somewhat different rate of progression.

In the No. 9702 scale the rate for 100 miles is $2.30, yielding, on the minimum of 15 tons prescribed in that case, $34.50 per car and 34.5 cents per car-mile. A rate of $2.10 for this distance, based on a 20-ton minimum, would yield $42 per car and 42 cents per car-mile, somewhat higher earnings than the Royster rate based on a 15-ton minimum. In his proposed report the examiner used this rate of $2.10 for 100 miles as a starting point in determining the measure of his scale.

Upon the record before us no other method of determining just and reasonable rates is possible than the exercise of our best judgment in the light of all the evidence submitted. After careful consideration of this evidence, which we have summarized above, and having in mind the prin-

ciples which we believe should be applied in distributing the burden of rail transportation and which are also set forth above, we have reached the conclusion that a scale somewhat different from that recommended by the examiner, but producing much the same aggregate revenue, should be adopted.

We therefore find that the rates applicable to the interstate transportation in carloads of mixed fertilizers and of the fertilizer materials listed in Appendix B hereto over standard lines throughout the territory described in Appendix A hereto are, and for the future will be, unreasonable to the extent that they exceed rates per net ton based on the distance scale shown in the table below, subject to the minimum carload weights found reasonable below; provided, however, that in applying such rates to the longer hauls the respondent carriers may, for purposes of tariff simplification, subject to our approval, use groups of moderate extent and measure the rates by distances to and from fairly representative points in such groups.

	Rate, cents
[fol. 83] 10 miles and under	100
15 miles and over 10	110
20 miles and over 15	120
25 miles and over 20	125
30 miles and over 25	135
35 miles and over 30	140
40 miles and over 35	150
45 miles and over 40	155
50 miles and over 45	165
55 miles and over 50	170
60 miles and over 55	180
65 miles and over 60	185
70 miles and over 65	195
75 miles and over 70	200
80 miles and over 75	205
85 miles and over 80	210
90 miles and over 85	215
95 miles and over 90	220
100 miles and over 95	225
110 miles and over 100	235
120 miles and over 110	245
130 miles and over 120	255
140 miles and over 130	265

	Rate, cents
150 miles and over 140	275
160 miles and over 150	285
170 miles and over 160	295
180 miles and over 170	305
190 miles and over 180	315
200 miles and over 190	320
210 miles and over 200	330
220 miles and over 210	335
230 miles and over 220	345
240 miles and over 230	350
250 miles and over 240	360
260 miles and over 250	365
270 miles and over 260	375
280 miles and over 270	380
300 miles and over 280	385
320 miles and over 300	410
340 miles and over 320	425
[fol. 84] 360 miles and over 340	440
380 miles and over 360	450
400 miles and over 380	460
420 miles and over 400	470
440 miles and over 420	480
460 miles and over 440	490
480 miles and over 460	500
500 miles and over 480	505
520 miles and over 500	515
540 miles and over 520	525
560 miles and over 540	535
580 miles and over 560	545
600 miles and over 580	555
620 miles and over 600	565
640 miles and over 620	575
660 miles and over 640	585
680 miles and over 660	595
700 miles and over 680	605
720 miles and over 700	615
740 miles and over 720	620
760 miles and over 740	630
780 miles and over 760	635
800 miles and over 780	645
825 miles and over 800	655
850 miles and over 825	665

	Rate, cents
875 miles and over 850	675
900 miles and over 875	685
925 miles and over 900	695
950 miles and over 925	705
975 miles and over 950	715
1,000 miles and over 975	725

We further find that the rates applicable to the interstate transportation, in carloads, of the aforesaid mixed fertilizers and fertilizer materials throughout said territory over routes made up, in whole or in part, of any of the short or weak lines described below are, and for the future will be, unreasonable to the extent that they exceed rates per net ton based on the distance scale shown in the table above plus an arbitrary of not to exceed 50 cents per net ton, [fol. 85] subject to the minimum carload weight found reasonable below, such arbitrary to accrue solely to the participating short or weak line or lines. The short and weak lines covered by this finding are the carriers listed in Appendix D hereto, other than those that are under common control or management with some standard carrier, and also include the Columbus & Greenville, the Kinston Carolina, the Carolina Railroad, the Gulf, Mobile & Northern, the Birmingham & Northwestern, and the Atlanta, Birmingham & Atlantic, so long as they remain independent of standard-line control.

We further find that the rates applicable to the interstate transportation, in carloads, of the aforesaid mixed fertilizers and fertilizer materials throughout said territory over routes made up, in whole or in part, of the lines of the Norfolk Southern are, and for the future will be, unreasonable to the extent that they exceed rates per net ton based on the distance scale shown in the table above, subject to the minimum carload weights, found reasonable below, plus 10 per cent, but in no event to exceed 50 cents per net ton, such excess over and above the standard rates to accrue solely to the Norfolk Southern.

All carriers not covered by the findings of the two preceding paragraphs shall be classed as standard. With respect to the so-called short or weak lines it may be said, as

was stated in Southern Class Rate Investigation, 100 I. C. C. 513, 653-654, that most of these roads are situated wholly within the limits of a single State and the State commissions are in a much better position than we are to investigate and determine their needs. It is our hope that the State commissions will, either before or after the rates herein prescribed become effective, bring to our attention any instances where the special treatment accorded these short or weak lines is, in their opinion, more or less liberal than their just needs require.

We further find that a reasonable carload minimum weight on mixed fertilizers will, for the future, be 40,000 pounds, and that all fertilizer materials which are now accorded a lower minimum may be increased to that amount, except cottonseed hulls for which we find that a minimum of 30,000 pounds is reasonable.

[fol. 86] In computing distances for the application of the foregoing rates, we find that the shortest routes shall be used over which carload traffic can be moved without transfer of lading.

The carriers propose to maintain rates on less-than-carload traffic, as do also the shippers, made 120 per cent of the carload rates. This is the classification basis in southern territory and has been in effect for some time. This spread between less-than-carload and carload rates, however, seems too small when compared with the spread between corresponding rates on other commodities. The less-than-carload fertilizer traffic in this territory is apparently not of great proportions. It was shown that the less-than-carload shipments from various manufacturers in Alabama represented but 2.14 per cent of their total rail movement, and that of a total tonnage of 16,947 tons moving from Blackshear in 1924 to destinations in Florida and Georgia only 1,426 tons, or 8.4 per cent, consist of less-than-carload shipments. While the record is not altogether satisfactory upon this point, it is nevertheless adequate to warrant the conclusion that the less-than-carload rates should not be less than 130 per cent of the carload rates.

We therefore find that the rates applicable to the interstate transportation in less than carloads of the aforesaid mixed fertilizers and fertilizer materials throughout the territory described in Appendix A hereto are, and for the future will be, unreasonable to the extent that they exceed

rates per net ton equal to 130 per cent of the corresponding rates prescribed herein for carload shipments.

Exceptions to the General Adjustment

An exception to the strict application of the distance scales is proposed by the carriers in connection with fertilizers and materials from the Ohio River crossings. Under their proposed adjustment to points in Carolina territory, Louisville was to be taken as the pivotal point, applying the distance rates therefrom, with rates from Cincinnati made the same as from Louisville, and those from Cairo and Evansville made 79 cents higher than from Louisville. This differential of 79 cents represented, it is un- [fol. 87] derstood, the average difference in the rates, based on the Royster scale, to representative points in the Carolinas from Louisville, on the one hand, and from Cairo and Evansville, on the other.

To Mississippi Valley territory * the carriers proposed to maintain rates from the respective crossings, Cairo to Louisville, inclusive, on the strict distance scales. From Cincinnati, Covington, Ky., Newport, Ky., Lexington, Ky., and other points grouped therewith, they proposed to maintain rates to the Mississippi Valley made 55 cents higher than the rates in effect from Louisville. This differential represented about the average difference in the rates under the Royster scale from Louisville and Cincinnati.

To destinations in Montgomery and Atlanta subterritories * the carriers proposed to maintain rates from Cairo

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*The rate territories in the Southeast were described in Southern Class Rate Investigation, 100 I. C. C. 513, 522-523, as follows:

"* * * southern territory has been divided into certain districts which are generally recognized but not easy to define by exact limits. On the west is a wedge-shaped district, known as Mississippi Valley territory, the western boundary of which is the Mississippi River and the eastern boundary a line running from Paducah, Ky., to Mobile, Ala., and following for the most part the Mobile & Ohio Railroad. To the east of this district lies southeastern territory. Its northern limits are vague, but apparently

and Evansville the same as from Louisville, with rates from Cincinnati and points grouped therewith made 55 cents higher to points in Montgomery subterritory, and the same as from Louisville to points in Atlanta subterritory. In this adjustment Louisville was taken as the pivotal point, rates to be established therefrom in accordance with the distance scales. The distance from Cincinnati to points in Montgomery subterritory is said to be substantially 110 miles greater than from Louisville, which resulted generally in rates under the Royster scale 56 cents higher than from Louisville. The present differential is 54 cents, and the median was used.

[fol. 88] It is understood that the rates under this proposed adjustment from the Ohio River crossings would apply largely on fertilizer materials such as tankage, dried blood, and cyanamid, originating beyond the crossings, and that little or no mixed fertilizer tonnage would be handled thereunder.

Objection was voiced by counsel for the Kentucky commission to grouping Lexington with Cincinnati, Lexington being located 100 miles south of that crossing. It is his contention that this interior point should have the benefit of its location. The only reasons advanced for this grouping are that it has been maintained for a considerable time and places the shippers at those points on an equality. These reasons are not persuasive.

With this exception as to Lexington, no objections were made to the proposal of the carriers respecting the relative

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the boundary is the Memphis division of the Southern and, strictly speaking, it does not extend into Kentucky or include any large area in Tennessee, although portions of those States are frequently treated as within the Southeast. Certainly it embraces Alabama, Georgia, northern Florida, and the extreme southern portion of South Carolina. It is divided into Montgomery subterritory and Atlanta subterritory by a line running from Chattanooga, Tenn., to Birmingham, Ala., thence to Columbus, Ga., and thence south to the Gulf. Carolina territory includes North Carolina, and the northern part of South Carolina, and the strip of Virginia south of the line of the Norfolk & Western."

adjustment of rates from the Ohio River crossings. To the extent that this adjustment may be accomplished without deviation from our findings as to reasonable maximum rates, and under the fourth-section relief hereinafter accorded, there seems, with the exception noted, to be no sufficient reason for disapproval.

Import Rates

The carriers object to consideration of the import rates in this proceeding, contending that our order did not embrace that traffic. The shippers take the opposite view. Rates on foreign commerce are not covered by the order and hence, under strict construction, the investigation does not include import rates. This point, however, is not of importance, for the shippers do not urge specific findings at this time with respect to import traffic. Both the carriers and the shippers propose a limited system of port equalization, brought about, in general, by applying the domestic-distance scales from the nearest port and placing other competing ports within reasonable limits upon the same basis. This equalization would apply only to points located some little distance from the seaboard, say 200 miles from the nearest port. For the shorter distances the rates from each port would be made in accordance with the scale. In such equalization the Gulf ports and the south-Atlantic ports are to be considered two distinct and unrelated groups.

[fol. 89] It seems to be the shippers' thought that the carriers should propose and submit to them for their study and suggestions a comprehensive adjustment covering import traffic. No objection was voiced by the carriers to such procedure.

Fourth-Section Relief[18]

The carriers ask for relief from the long-and-short haul provision of the fourth section which may be summarized under the following heads:

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[18]Various fourth-section applications of the southern carriers, as set forth in Appendix E, were assigned for hearing in connection with this proceeding in so far as they covered rates on fertilizer and fertilizer materials between points in southern territory.

1. Relief to enable circuitous routes to meet the rate of the direct route between competitive points without observing such rate as maximum at intermediate points, subject to the limitation to such relief required by the fourth section.

2. Relief to enable the maintenance of the proposed related adjustment from the Ohio River crossings, such relief not to be subject to the limitation required in the case of relief granted on the ground of circuitry, except from the pivotal points.

3. Relief to enable joint-line routes to meet the rate of a single-line route between competitive points without observing such rate as maximum at intermediate points, the rates to such intermediate points, however, in no case to be higher than the joint-line scale.

4. Relief to enable routes in which short or weak lines participate to meet the rate of a standard route between competitive points without observing such rate as maximum at intermediate points on the short or weak line.

The relief sought under the first head is similar to that ordinarily granted in such cases, but in prescribing rates relatively low because of the character of the traffic, as we are doing in this proceeding, doubt exists as to whether routes of great circuity may lawfully be given the relief which they seek or, in other words, whether the resulting [fol. 90] rates would be "reasonably compensatory" over such routes. For example, the Mobile & Ohio desires to meet over its circuitous route through Artesia, Miss., the rate of the direct line of the Louisville & Nashville between Mobile and Montgomery, Ala. The distance from Mobile to Montgomery over the Louisville & Nashville is 178 miles, while over the route of the Mobile & Ohio it is 401 miles, or 125 per cent longer. The carriers vigorously oppose the imposition of any limitation on circuity. They say that such a limitation requires the specific designation of the routes over which the rates apply, and to do this is impracticable from a tariff standpoint.

This precise question was presented in Brick and Clay Products in the South, 88 I. C. C. 543. In our report in that proceeding we authorized the carriers over indirect routes to meet the rates of direct routes at competitive points and maintain higher rates at intermediate points,

subject to the proviso that the relief granted shall not apply (1) where the short route is 150 miles or less and the longer route is more than 70 per cent circuitous; and (2) where the short route exceeds 150 miles in length and the longer route is more than 50 per cent circuitous, provided, however, that where the short route exceeds 150 miles and the longer route does not exceed 255 miles, relief will apply to such longer route even though more than 50 per cent circuitous. In the report on further argument, 113 I. C. C. 330, we declined to grant the carriers' request that these circuity restrictions be eliminated from our order, but we authorized the use of a rule to be published in the tariffs, applying these limitations with certain modifications, which would obviate the necessity for enlarging the tariffs by publishing individual routings. We see no reason why the same limitations and methods of applying them should not be adopted in the instant case, and our order will be framed accordingly.

The maintenance of the proposed related adjustment from the Ohio River crossings is, in our opinion, an insufficient reason for granting the relief sought under the second head above. If, however, a plan of grouping is adopted with our approval in connection with the longer hauls and it becomes necessary to obtain fourth-section relief for the [fol. 91] purpose of maintaining such grouping, which shall not be subject to the limitation attaching to relief granted on the ground of circuity, an appropriate request for such relief will then receive consideration.

In view of the findings herein made the relief sought under the third head need not be considered.

Relief under the fourth head is sought because of the financial necessities of the short or weak lines. These carriers frequently have been accorded in other cases the relief which they here seek. It will be granted, subject to the limitations that the rates to the intermediate points on the short or weak lines shall not exceed the rates herein found to be reasonable to such points and in no case shall exceed the lowest available combination.

The Intrastate Cases

We come now to a consideration of the petition of the carriers alleging undue prejudice against interstate shippers and localities and unjust discrimination against inter-

state traffic, in violation of sections 3 and 13 of the interstate commerce act, by reason of the intrastate rates maintained in Alabama, Georgia, and South Carolina. The carriers' evidence was directed almost entirely to a comparison of the interstate rates from manufacturing points outside the respective States with the intrastate rates from plants within those States, the destinations selected being generally located on lines operating between such manufacturing points.

Taking up, first, the Alabama situation, it is shown by numerous exhibits that the rates from points in Mississippi, Tennessee, and Georgia to destinations within Alabama are substantially higher than the Alabama rates for corresponding distances. A few illustrations will suffice to give a general idea of the present adjustment. In conjunction with the present rates are shown also the rates under the single-line Royster scale and under the scale herein found reasonable, for the distances shown:

[fol. 92] From—	To—	Distance	Present rates	Royster scale	Scale herein prescribed
		Miles	Cents	Cents	Cents
Tupelo, Miss.	Glen Allen, Ala.	72	230	214	200
Birminghom, Ala.	do.	75	170	214	200
Chattanooga, Tenn.	Larkinsville, Ala.	62	210	203	185
Decatur, Ala.	do.	60	155	203	180
Nashville, Tenn.	Elkmont, Ala.	98	259	259	225
Birmingham, Ala.	do.	107	205	259	235
Columbus, Ga.	Superior, Ala.	46	203	180	165
Montgomery, Ala.	do.	49	145	180	165
Columbus, Ga.	Alexander City, Ala.	75	237	214	200
Birmingham, Ala.	do.	82	180	237	210
Rome, Ga.	Anniston, Ala.	63	216	203	185
Birmingham, Ala.	do.	63	160	203	185
Atlanta, Ga.	Heflin, Ala.	85	259	237	210
Birmingham, Ala.	do	82	180	237	210

[fol. 93] In the foregoing table, destinations have been selected approximately equidistant from the respective origins, but for other distances the intrastate and interstate rates bear a similar relation. Manufacturing plants are located at all the originating points shown, and the evidence indicates that the transportation conditions in Alabama are not dissimilar to those met with on the interstate hauls.

The Alabama commission contends that the law does not require that intrastate rates shall be maintained on the exact level of interstate rates, citing Ohio State Rates on Sand, Gravel, Stone, and Paving Blocks, 85 I. C. C. 66, and that before an intrastate rate may be condemned it must be found to work undue prejudice against persons or localities in interstate or foreign commerce or unjust discrimination against interstate or foreign commerce as a whole, citing Wisconsin R. R. Commission v. C., B. & Q. R. R. Co., 257 U. S. 563. It urges that the carriers have not proved their case, and points to the fact that the carload minimum in connection with the Alabama rate is 5 tons higher than under the interstate rates, and that its scale averages as high as the so-called normal scales of three of the largest trunk lines operating in that State, namely, the Illinois Central, the Louisville & Nashville, and the Mobile & Ohio. This latter statement is true so far as the average is concerned, but specific consideration of the present interstate rates is unnecessary, for they will be changed under our findings herein. As shown by the above table, the new rates will be substantially higher for equal distances than the Alabama intrastate rates, and they will be subject to the same carload minimum.

While exact harmony between intrastate and interstate rates may not in all cases be required by the law, nevertheless when there is such a preponderance of intrastate traffic as here obtains, the conclusion is inevitable that the application of rates thereon substantially lower than the interstate rates contemporaneously applied under similar conditions must bring about, in some degree at least, the unjust discrimination against interstate commerce as well as the undue prejudice to persons or localities in interstate commerce which are declared by the act to be unlawful.

[fol. 94] Effective November 15, 1924, the Georgia Public Service Commission promulgated a scale of rates on fertilizer generally lower than that then in effect. These rates were temporarily enjoined by the Federal court for the Northern District of Georgia by reason of their effect on certain short lines, and thereafter the Georgia commission rescinded its order. The present rates are those which have been in effect in that State since 1897, as revised under the general rate changes. The showing with respect to interstate rates into Georgia over single-line routes as compared with corresponding intrastate rates is as follows:

From—	To—	Distance	Present rates	Royster scale	Scale herein prescribed
		Miles	Cents	Cents	Cents
[fol. 95] Montgomery, Ala.	Nesbit, Ga.	172	372	327	305
Savannah, Ga.	do.	168	293	315	295
Montgomery, Ala.	Pine Park, Ga.	204	338	349	330
Savannah, Ga.	do.	208	315	349	330
Dothan, Ala.	Naylor, Ga.	148	327	293	275
Savannah, Ga.	do.	144	282	293	275
Chattanooga, Tenn.	Bowdon Junction, Ga.	131	270	282	265
Macon, Ga.	do.	128	259	270	255
Chattanooga, Tenn.	Hamby, Ga.	39	169	169	150
Rome, Ga.	do.	39	135	169	150
Jacksonville, Fla.	Thalmann, Ga.	73	237	214	200
Savannah, Ga.	do.	70	169	214	195

[fol. 96] The record does not include a similar comparison of joint-line interstate rates with the current joint-line rates within Georgia. The commission of that State contends that, in using single-line rates, the true situation is not presented inasmuch as joint-line rates in Georgia are made on the full combination basis. It points to the showing of record that the carriers' joint-line rates are not in a single instance, save one, higher than the joint-line rates in Georgia, but, on the contrary, are in most cases considerably lower. The Georgia commission further states that the present basis of rates has been in effect for many years, and that this is the first time that unjust discrimination against interstate commerce has been alleged. No interstate shipper testified in this proceeding that he is at a disadvantage because of the Georgia rates. It was testified, however, by a representative of the Central of Georgia that the bulk of its fertilizer traffic in Georgia moves on single-line rates.

On this record the joint-line rates in Georgia can not be condemned. They are not shown to operate to the prejudice of interstate shippers not to place a burden on interstate commerce. Nor, after the adoption of the scale prescribed herein for application on interstate traffic, does it appear that the single-line rates in Georgia will, on the whole, result in unjust discrimination against interstate commerce or in undue prejudice to persons or localities in interstate commerce.

The Railroad Commission of South Carolina took no part in this proceeding. The intrastate rates attacked by the carriers in No. 16335 are those prescribed by that commission in its order of February 11, 1924, which rates became effective March 15 of that year. The rates then required to be published were 12 per cent lower than the rates theretofore in effect, which had been maintained since 1909, as revised by the general rate changes. Again [fol. 97] on January 30, 1925, the South Carolina Commission ordered a still further reduction in the carload rates on fertilizer and materials, but this order was temporarily enjoined by the Federal court for the Eastern District of South Carolina, and the proceeding was still pending when argument was here had. Joint rates in South Carolina are made 20 per cent less than the full combination.

The alleged disparity between the intrastate and interstate rates is illustrated by the following examples:

[fol. 98] From—	To—	Distance Miles	Present rates Cents	Royster scale, single line Cents	Scale herein prescribed Cents
Charlotte, N. C.	Cornwell, S. C.	52	237	192	170
Columbia, S. C.	do	55	179	192	170
Wadesboro, N. C.	Middendorf, S. C.	54	237	203	185
Columbia, S. C.	do	68	188	214	195
Wadesboro, N. C.	Scranton, S. C.	85	237	237	210
Charleston, S. C.	do	82	209	237	210
Wilmington, N. C.	Winona, S. C.	101	259	259	235
Charleston, S. C.	do	112	248	270	245
Augusta, Ga.	Yenome, S. C.	61	203	203	185
Columbia, S. C.	do	68	188	214	195
Augusta, Ga.	Springfield, S. C.	58	203	203	180
Columbia, S. C.	do	43	158	180	155
Augusta, Ga.	Hagood, S. C.	130	304	270	255
Charleston, S. C.	do	130	268	270	255
Savannah, Ga.	Springfield, S. C.	109	270	259	235
Charleston, S. C.	do	101	238	259	235
[fol. 99] Savannah, Ga.	Pelion, S. C.	129	304	270	255
Charleston, S. C.	do	121	258	270	255
Savannah, Ga.	Ward, S. C.	156	338	315	285
Charleston, S. C.	do	150	288	293	275
Savannah, Ga.	Westminster, S. C.	324	473	439	425
Charleston, S. C.	do	301	337	428	410
Atlanta, Ga.	Kings Creek, S. C.	220	383	349	335
Augusta, Ga.	do	199	372	338	320
Charleston, S. C.	do	240	337	372	350

[fol. 100] Many other comparisons were made, including interstate rates into South Carolina with the South Carolina distance scale. This further showing is similar to the foregoing, and need not be detailed here. The following comparisons show the relation between the present single-line intrastate rates and the scale herein prescribed, the South Carolina rates which stand temporarily enjoined being also shown:

	Present rates in South Carolina	Scale herein prescribed	South Carolina rates temporarily enjoined
	Cents	Cents	Cents
5 miles	90	....	80
10 miles	90	100	86
15 miles	109	110	98
20 miles	119	120	114
25 miles	129	125	123
35 miles	139	140	133
45 miles	158	155	151
50 miles	169	165	161
60 miles	179	180	171
70 miles	188	195	179
75 miles	198	200	179
85 miles	209	210	189
90 miles	218	215	199
100 miles	228	225	208
110 miles	238	235	217
115 miles	248	245	217
125 miles	258	255	227
130 miles	268	255	236
135 miles	277	265	236
140 miles	277	265	247
145 miles	288	275	247
150 miles	288	275	255
160 miles	297	285	264
180 miles	307	305	283
190 miles	317	315	292
210 miles	327	330	302
300 miles	337	395	321
320 miles	....	410	331

[fol. 101] The Southern States Phosphate & Fertilizer Company, with factories at Savannah and Augusta, showed the disadvantage it has been under since March 15, 1924, in marketing its products at South Carolina destinations. Savannah and Augusta meet their principal competition from Charleston and Columbia, respectively. The average difference in rates in favor of Charleston is shown to be around 40 cents per ton, and about 22 cents per ton in favor of Columbia. This company claims reparation based solely on the foregoing showing of disparity, but its only allegation is that of undue prejudice, and in the case of that violation of the law a mere difference in rates does not alone necessarily measure the amount, or prove the fact, of a shipper's damage. Penna. R. R. Co. v. International Coal Co., 230 U. S. 184; Kerr & Co. v. S. S. Ry. Co., 62 I. C. C. 296.

Unquestionably the present rates within South Carolina prejudice persons and localities in interstate commerce and prefer intrastate shippers. Furthermore, the reduced intrastate rates prescribed by the South Carolina Commission in its order of January 30, 1925, if permitted to become effective, would result in unjust discrimination against interstate commerce and in undue prejudice to persons and localities in interstate commerce, as compared with the interstate rates herein prescribed. As compared with the latter rates, however, the present rates in South Carolina would not, on the whole, result in such unjust discrimination or undue prejudice.

With respect to these intrastate cases we find:

1. That the maintenance of intrastate rates in Alabama on a lower basis than the corresponding rates herein found reasonable for the interstate transportation of fertilizers and fertilizer materials will for the future result in unjust discrimination against interstate commerce and in undue prejudice to persons and localities in interstate commerce.

2. That, in view of the rates herein prescribed, the maintenance of the present intrastate rates in Georgia will not for the future result, on the whole, in undue prejudice to persons or localities in interstate commerce, nor in unjust discrimination against interstate commerce. Such few intrastate rates as are not in harmony with the rates herein found reasonable should and no doubt will be revised.

[fol. 102] 3. That, in view of the rates herein prescribed, the maintenance of the present intrastate rates in South Carolina will not for the future result, on the whole, in undue prejudice to persons or localities in interstate commerce, nor in unjust discrimination against interstate commerce, but that the maintenance of the intrastate rates in that State now temporarily enjoined would result in such undue prejudice and unjust discrimination.

No orders will be entered in these State cases, Nos. 16335, 16336, and 16484, at this time. It is believed that the respective State commissions will cooperate in authorizing such revisions as may be necessary to bring their rates into harmony with the interstate adjustment.

Cottonseed Meal

The cottonseed meal interests state that this commodity has been included in the list of fertilizer materials since 1889, and they now seek a finding that it should be so continued. The carriers are willing to continue such a classification for the present, but they strongly object to its indefinite continuance. While in southern territory the predominant use of cottonseed meal is that of fertilization, in the Southwest and in official territory it is used almost exclusively for feeding purposes. It is the carriers' thought that as time goes on it may be used more and more for the latter purpose also in southern territory, so that in the future the classification may more appropriately be with feed rather than with fertilizer materials.

In the season of 1923-24 over 600,000 tons of cottonseed meal were produced in southern territory, and the meal interests roughly estimate that about 73 per cent of this tonnage was used as a fertilizer or fertilizer material. Its fertilizing characteristics are especially desirable in tobacco growing, although it is also used to quite an extent on cotton and other crops, principally in combination with other materials. The price of cottonseed meal is said to have been about $35 a ton when the crushing season opened in 1925.

We find that cottonseed meal should for the present be classified as a fertilizer material in southern territory.

[fol. 103] Cyanamid

Cyanamid is manufactured by the American Cyanamid Company, a Maine corporation, at Niagara Falls, Ontario, Canada, the only present point of production in North America. It is a product obtained by combining the nitrogen of the air with lime and coke, and in its marketable state is a grayish powder containing about 26 per cent of ammonia. It is said to be the cheapest form of organic ammonia available. Besides its value as an ammoniate, it is an excellent conditioner of fertilizer mixtures, making the latter dry and friable and easy to apply to the soil. Owing to its high lime content, however, only about 60 pounds can be used normally in a ton of commercial fertilizer. For the first six months of 1925 it was testified that the price of cyanamid, f. o. b. origin, was $1.68 per unit of ammonia, which it is understood figures $43.68 per ton of cyanamid. It is shipped in burlap bags containing 200 pounds each, the average car loading is around 50,000 pounds, and no loss or damage claims have ever been filed. The production of cyanamid has been increasing steadily, over 62,000 tons having been shipped from Niagara Falls during the year ending March 31, 1925. Of this tonnage, 56 per cent went into southern territory. During the same period over 14,000 tons were imported from European countries, most of which was used in the southern States.

No joint rates are in effect to southern territory, and this company seeks proportional rates from the Ohio River crossings and Virginia cities made 62 per cent of whatever distance scale may be adopted for general application. It shows that at the present time it has commodity rates to many points in official territory which approximate 70 per cent of the sixth-class rates, the rating accorded fertilizer and materials in that territory, and that to the Virginia cities it has a proportional rate, applicable on traffic destined to southern points, of $5.40 a ton, which is 62.7 per cent of the sixth-class rate. This latter affords the basis for the rates sought.

To points in South Carolina the average through charge is shown to be a little over $10 a ton, with a weighted average rate of $8.59. To Alabama, the weighted-average rate [fol. 104] is $9.37 and the average through charge $9.66.

The scale herein prescribed will not materially affect the through charges.

It was shown that shipments made to destinations in Alabama, Georgia, North Carolina, and Florida during the year ending March 31, 1925, moved a weighted average distance of 414 miles beyond the Virginia cities, at a weighted-average rate of $4.54, and it is strongly urged that as the average haul of cyanamid in southern territory is approximately four times greater than that of fertilizer, it is entitled to rates on a considerably lower basis than the corresponding local rates from these gateways.

In Southern Class Rate Investigation, supra, joint rates, with certain exceptions, were prescribed as reasonable from points in official territory to destinations in the South substantially lower than the combination basis over the Ohio River or the Virginia cities. The cyanamid interests urge that the principle there recognized applies with even greater force to commodity rates.

While it may well be that joint rates should be established on cyanamid from Niagara Falls to points in southern territory, or that in lieu thereof proportional rates lower than the corresponding local rates should be established from the Ohio River crossings and Virginia cities to such points, we are not persuaded that we have authority in this proceeding to require the establishment either of such joint rates or of such proportional rates. Only rates for the movement of fertilizer and fertilizer materials between points in southern territory are in issue in this proceeding, and proportional rates from the Ohio River crossings or the Virginia cities are not such rates. They are rather rates applying to the through movement of traffic from points outside the southern territory to points within such territory. Inasmuch as the situation with respect to this movement of cyanamid, however, has been developed of record, we feel warranted in stating that, in the absence of through joint rates, it seems just and reasonable that proportional rates applicable to this traffic should be established from the Ohio River crossings and the Virginia cities on a somewhat lower basis than the local rates [fol. 105] prescribed herein. We commend this situation to the attention of the carriers.

Appropriate orders embodying our findings herein will be entered.

Appendix A

At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 7th Day of October, A. D. 1924

No. 16295

Fertilizers and Fertilizer Materials Between Southern Points

Order

It appearing, That in many instances interstate rates on fertilizers, fertilizing compounds, and fertilizer materials between points in southern classification territory differ materially for substantially similar hauls and that many of said rates are higher for shorter distances than for longer distances over the same line or route;

And it appearing, from numerous formal and informal complaints to this commission that said interstate rates on fertilizers, fertilizing compounds, and fertilizer materials are in general unsatisfactory to shippers thereunder, that a general revision thereof has been proposed by the carriers serving said territory, and that petitions have been filed by carriers operating in the states of South Carolina and Alabama, alleging that the rates on fertilizers and fertilizer materials in effect within those states cause undue and unreasonable advantage, preference and prejudice as between persons and localities in interstate commerce on the one hand and intrastate commerce on the other;

It is ordered, That a proceeding of investigation and inquiry be, and it is hereby, instituted by this commission on its own motion into and concerning said interstate rates on fertilizers, fertilizing compounds, and fertilizer materials and the charges resulting therefrom, applicable between points in the territory described in the next following [fol. 106] paragraph, with a view to determine whether said rates and charges are unreasonable or are unduly prejudicial to or unduly preferential of particular localities or persons and to making such order or orders as may be proper in the premises.

It is further ordered, That said proceeding of investigation and inquiry shall include said rates and charges ap-

plicable in interstate commerce between points in the following territory:

1. Between points in the states of Kentucky, (except local points on the Chesapeake & Ohio Railway), Tennessee, Mississippi, Alabama, Georgia, Florida, North Carolina, South Carolina, and Louisiana east of the Mississippi River; also between points on the north bank of the Ohio River, Cairo, Ill., to Cincinnati, Ohio, inclusive, and Helena, Ark., on the one hand, and points in the above-named states on the other.

2. Between points in the state of Virginia on the one hand and points in the states of Kentucky (except local points on the Chesapeake & Ohio Railway and south bank Ohio River crossings), Tennessee, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Louisiana east of the Mississippi River on the other.

It is further ordered, That the common carriers named in the appendix[a] hereto be, and they are hereby, made respondents to the proceeding.

And it is further ordered, That this proceeding be assigned for hearing at such times and places as the commission may hereafter direct.

By the Commission:

George B. McGinty, Secretary. (Seal.)

Appendix B

List of Fertilizer Materials

Carload

Ammonia, sulphate of, in packages or in bulk, C. L. minimum weight 30,000 pounds.

Ashes:

Bagasse, cactus, cotton boll, burr or seed hull, manure, sage brush or wood, in packages or in bulk, C. L., minimum weight 30,000 pounds.

[fol. 107] Kelp, in bags, C. L., minimum weight 30,000 pounds.

Rice hull, in packages or in bulk, C. L., minimum weight 30,000 pounds.

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[a] Omitted because of length.

Beet slops (beet sugar final molasses residuum), in tank cars, C. L., subject to Rule 35 of Southern Classification.

Blood dried in bulk in bags or barrels, or in bulk, C. L., minimum weight 40,000 pounds.

Bone, charred filtering (animal charcoal), spent, in bags, C. L., minimum weight 36,000 pounds.

Bones, other than human or fresh-meat bones:

Ground, in bags or barrels, C. L., minimum weight 30,000 pounds.

Not ground, in packages or in bulk, C. L., minimum weight 30,000 pounds.

Castor-bean hulls or stems, ground or not ground, in packages or in bulk, C. L., minimum weight 30,000 pounds.

Castor pomace, in bags or in bulk, C. L., minimum weight 40,000 pounds.

Cement flue dust, in packages or in bulk, C. L., minimum weight 40,000 pounds.

Cocoa-bean shells, ground, in bulk in bags, C. L., minimum weight 40,000 pounds.

Cottonseed cake or meal, loose or in bags, C. L., minimum weight 40,000 pounds.

Cottonseed hulls, not ground, in packages or in bulk, C. L., minimum weight 30,000 pounds.

Cottonseed hulls, ground (cottonseed-hull bran), in bags, C. L., minimum weight 30,000 pounds.

Cyanamid, in packages or in bulk, C. L., minimum weight 40,000 pounds.

Distillery molasses fertilizer residuum (dry or liquid residuum from molasses distillation):

Liquid, in tank cars, C. L., subject to Rule 35 of Southern Classification.

Dry, in bags, barrels, or boxes, C. L., minimum weight 36,000 pounds.

Fertilizer blacks (refuse black material for coloring fertilizers), in bulk in bags or barrels, C. L., minimum weight 36,000 pounds.

Fertilizer wool refuse, in machine-pressed bales, C. L., minimum weight 30,000 pounds, subject to Rule 34.

[fol. 108] Fertilizer compounds (manufactured fertilizers), N. O. I. B. N., dry, in bulk in cloth or paper bags, or in bulk in barrels or boxes, C. L., minimum weight 30,000 pounds.

Fish scrap, dry, not ground nor pulverized, or acid fish scrap, in packages or in bulk, C. L., minimum weight 36,000 pounds.

Grape pomace:

Dry, in packages or in bulk, C. L., minimum weight 36,000 pounds.

Other than dry, in packages or in bulk, C. L., minimum weight 36,000 pounds.

Iron or steel flue dust, in packages or in bulk, C. L., minimum weight 50,000 pounds.

Lime nitrogen:

In iron or steel barrels, C. L., minimum weight 40,000 pounds.

In tank cars, C. L., subject to Rule 35 of Southern Classification.

Lime (calcium), nitrate of, in double bags or in bulk in barrels, C. L., minimum weight 40,000 pounds.

Meal:

Hoof or Horn, in bags or in bulk, C. L., minimum weight 30,000 pounds.

Kapok seed, in bags or in bulk, C. L., minimum weight 60,000 pounds.

Rape seed, in packages or in bulk, C. L., minimum weight 40,000 pounds.

Senna bean, in bags, C. L., minimum weight 40,000 pounds.

Mussel meat, not edible, dry, in bags or barrels, C. L., minimum weight 30,000 pounds.

Peanut oil cake or oil cake meal, in bags or in bulk, C. L., minimum weight 40,000 pounds.

Peat:

Ground, in packages or in bulk, C. L., minimum weight 36,000 pounds.

Not Ground, in packages or in bulk, C. L., minimum weight 36,000 pounds.

Phosphate, basic, in packages or in bulk, C. L., minimum weight 40,000 pounds.

[fol. 109] Phosphate Rock:

Ground or pulverized—

Acidulated (acid prosphate), in packages or in bulk, C. L., minimum weight 40,000 pounds.

Acidulated and ammoniated, in packages or in bulk, C. L., minimum weight 40,000 pounds.

Patassium (potash):

Alkali salts, crude, dry, in packages or in bulk, C. L., minimum weight 40,000 pounds.

Beet or cane residuum, in bags, C. L., minimum weight 40,000 pounds.

Carbonate of, crude, in bulk in barrels, C. L., minimum weight 40,000 pounds.

Hartsalz, Kainit, Manure salts, double manure salts or sylvanit, in packages or in bulk, C. L., minimum weight 40,000 pounds.

Muriate of (chloride of potassium), in bags or in bulk in barrels or boxes, or in bulk, C. L., minimum weight 40,000 pounds.

Sulphate of, in bags or in bulk in barrels or boxes, or in bulk, C. L., minimum weight 40,000 pounds.

Tobacco crystals (tobacco potash salts), in bags or barrels, C. L., minimum weight 40,000 pounds.

Sea grass, sea moss, or seaweed:

Kelp, dried or ground, in bags, C. L., minimum weight 30,000 pounds.

Seasame oil cake or oil cake meal, in bags or in bulk, C. L., minimum weight 40,000 pounds.

Shells, clam, mussel, or oyster:

Crushed or ground, in packages or in bulk, C. L., minimum weight 36,000 pounds.

Not crushed nor ground, in packages or in bulk, C. L., minimum weight 40,000 pounds.

Sodium (soda):

Nitrate of (Chili saltpetre), in bags or in bulk in barrels or boxes, or in bulk, C. L., minimum weight 40,000 pounds.

[fol. 110] Nitre cake (crude bi-sulphate of soda), in packages or in bulk, C. L., minimum weight 40,000 pounds.

Soil compounds, containing two or more of the following ingredients:

Potash,	Magnesia,
Phosphates,	Carbonates,
Sulphates,	Iron oxides,
Limes,	Chlorides,
Silicates,	Manganese.

Carload minimum weight 30,000 pounds.

Soy (soja or soya) bean oil cake or oil cake meal, loose or in bags, C. L., minimum weight 40,000 pounds.

Sugar cake mud (refuse from sugar filter presses), in bags, C. L., minimum weight 40,000 pounds.

Sulphur (brimstone), in bulk in bags or in bulk, C. L., minimum weight 40,000 pounds.

Tankage:

Garbage, dry, in bags or in bulk, C. L., minimum weight 40,000 pounds.

Tankage, N. O. I. B. N., in bags or in bulk, C. L., minimum weight 40,000 pounds,

Tobacco, unmanufactured, stems, ground, in bags, C. L., minimum weight 40,000 pounds.

Tobacco dust, refuse, sand, or waste, in packages or in bulk, C. L., minimum weight 30,000 pounds.

Less Carload

Ashes:

Bagasse, cactus, cotton boll, burr or seed hull, manure, sage, brush or wood, in bags.

Kelp, in bags.

Rice hulls, in bags.

Bones, other than human or fresh meat bones:

Ground, in bags or barrels.

Not ground, in bags or barrels, or in barrels with cloth tops.

Castor bean hulls or stems, ground or not ground, in bags or barrels.

Cottonseed cake or meal, in bags.

[fol. 111] Cottonseed hulls:

Not ground, in bags or barrels, or in machine-pressed bales.

Ground (cottonseed hull bran), in bags.

Cyanamid, in bags or barrels.

Fertilizering compound (manufactured fertilizers), N. O. I. B. N., dry, in bulk, in bags, barrels or boxes.

Lime (calcium), nitrate of, in double bags or in bulk in barrels.

Mussel meat, not edible, dry, in bags or barrels.

Peanut oil cake or oil cake meal, in bags.

Phosphate, basic, in bags.

Phosphate rock:
Ground or pulverized—
Acidulated (acid phosphate), in bags or barrels.
Acidulated and ammoniated, in bags or barrels.

Potassium (potash):
Alkali salts, crude, dry, in bulk in bags, barrels, or boxes.
Hartsalz, kainit, manure salts, double manure salts or sylvanit, in bags, barrels, or boxes.
Muriate of (chloride of potassium), in bags or in bulk in barrels or boxes.
Sulphate of, in bags or in bulk in barrels or boxes.
Tobacco crystals (tobacco potash salts), in bags or barrels.

Sea grass, sea moss, or sea weed:
Kelp, dried or ground, in bags.

Shells, clam, mussel or oyster:
Crushed or ground, in bulk in bags, barrels, or boxes.
Not crushed nor ground, in bags, barrels, or boxes.
Sodium (soda), nitrate of (Chili saltpetre), in bags, or in bulk in barrels or boxes.
Soy, soja or soye) bean oil cake or oil cake meal, in bags.

Tankage:
Garbage, dry, in bags.
Tankage, N. O. I. B. N., in bags.
Tobacco, unmanufactured, stems, ground, in bags.

[fol. 112] Appendix C

Distance	Memphis-Southwestern scales (No. 9702)		Carriers proposed scale		Shippers' proposed scale	
	Single line	Joint line	Single line	Joint line	Single line	Joint line
	Cents	Cents	Cents	Cents	Cents	Cents
5 miles	100	120	90	...	80	...
10 miles	100	120	102	136	90	120
15 miles	110	130	124	158	100	130
20 miles	120	140	135	169	110	140
25 miles	130	150	147	184	120	150
30 miles	130	150	158	192	125	155
35 miles	140	160	158	192	130	160
40 miles	150	170	169	203	135	165
45 miles	160	180	180	203	140	170

Distance	Memphis-Southwestern scales (No. 9702)		Carriers proposed scale		Shippers' proposed scale	
	Single line	Joint line	Single line	Joint line	Single line	Joint line
	Cents	Cents	Cents	Cents	Cents	Cents
50 miles	160	180	180	214	145	175
55 miles	170	190	192	214	150	180
60 miles	180	200	203	225	155	185
65 miles	180	200	203	237	160	190
70 miles	190	210	214	237	165	195
75 miles	190	210	214	248	170	200
80 miles	200	220	225	259	175	205
85 miles	210	230	237	259	180	210
90 miles	210	230	237	270	185	215
95 miles	220	240	248	270	190	220
100 miles	230	250	259	282	195	225
105 miles	230	250	259	293	205	235
110 miles	240	260	259	293	205	235
120 miles	250	270	270	293	215	245
125 miles	260	280	270	304	225	255
130 miles	270	290	270	304	225	255
135 miles	270	290	282	315	235	265
140 miles	280	300	282	315	235	265
150 miles	290	310	293	327	245	275
160 miles	300	320	315	338	255	275
170 miles	310	330	315	349	265	285
180 miles	320	340	327	349	275	295
190 miles	330	350	327	360	285	305
200 miles	340	360	338	372	295	315
210 miles	350	370	349	372	305	325
220 miles	360	380	349	383	315	335
230 miles	370	390	360	383	325	345
240 miles	380	400	372	394	335	355
250 miles	390	410	372	405	345	365
260 miles	390	410	383	405	355	375
280 miles	410	430	394	428	365	385
300 miles	420	440	405	439	375	395
320 miles	440	460	428	450	385	405
340 miles	450	470	439	462	395	415
360 miles	460	480	450	484	405	415
380 miles	480	500	462	495	415	425
400 miles	490	510	484	507	425	435
425 miles	500	520	507	540	445	455
450 miles	510	530	518	552	455	465
475 miles	530	550	540	563	465	475
500 miles	540	560	552	574	475	485
525 miles	560	560	563	597	485	485
550 miles	570	570	574	608	495	495
575 miles	580	580	597	619	505	505
600 miles	590	590	608	630	515	515
[fol. 113] 625 miles	600	600	619	653	525	525
650 miles	610	610	630	664	535	535
675 miles	620	620	653	675	545	545
700 miles	630	630	664	687	555	555
725 miles	640	640	675	709	565	565
750 miles	650	650	687	720	575	575
775 miles	660	660	709	732	585	585
800 miles	670	670	720	743	595	595
825 miles	...	...	732	765	600	600
850 miles	...	...	743	774	605	605
875 miles	...	...	765	792	610	610
900 miles	...	...	777	801	615	615

Distance[1]	Memphis-Southwestern scales (No. 9702)		Carriers proposed scale		Shippers' proposed scale	
	Single line	Joint line	Single line	Joint line	Single line	Joint line
	Cents	Cents	Cents	Cents	Cents	Cents
925 miles	...	...	788	819	620	620
950 miles	...	...	799	837	625	625
975 miles	...	...	822	846	630	630
1,000 miles	...	...	833	855	635	635

[1] The mileage blocks are not in all cases uniform under all the scales shown. Up to 800 miles they are those used in No. 9702, the limit of that scale.

Appendix D

Southeastern Members of the American Short Line Railroad Association

Aberdeen & Rockfish Railroad Company.
Alabama, Florida & Gulf Railroad Company.
Alabama, Tennessee & Northern Railway.
Alabama & North Western Railroad.
Andalusia, Florida & Gulf Railway Company.
Atlantic & Western Railroad Company.
Atlantic & Yadkin Railway.
Bamberg, Erhardt & Walterboro Railroad Company.
Bennettsville & Cheraw Railroad Company.
Birmingham & Southeastern Railway Company.
Blue Ridge Railway.
Buffalo, Union-Carolina Railroad.
Carolina & Northwestern Railway Company.
Charlotte Harbor & Northern Railway.
Charlotte, Monroe & Columbia Railroad.
Chattahoochee Valley Railway Company.
Chesterfield and Lancaster Railroad Company.
Collins & Gleanville Railroad Company.
Columbia, Newberry & Laurens Railroad Company.
Cumberland and Manchester Railroad Company.
Danville & Western Railway Company.
Dover and Southbound Railroad Company.
East Tennessee & Western North Carolina Railroad Company.
East and West Coast Railway.
Elberton & Eastern Railroad Company.
Fernwood, Columbia & Gulf Railroad Company.
Flemingsburg & Northern Railroad Company.
Flint River & Northeastern Railroad Company.
Florida Central & Gulf Railway.
[fol. 114] Frankfort & Cincinnati Railway Company.
Garyville Northern Railroad Company.
Georgia, Ashburn, Sylvester & Camilla Railway.
Georgia, Florida & Alabama Railway Company.
Georgia Northern Railway Company.
Georgia & Florida Railway.
Gainesville & Northwestern Railroad Company.
Greene County Railroad Company.
Greenville & Northern Railway Company.
Hampton & Branchville Railroad Company.
High Point, Randleman, Asheboro & Southern Railroad.
High Point, Thomasville & Denton Railroad Company.
Kentucky & Tennessee Railway.
Lancaster & Chester Railway Company.
Laurinburg & Southern Railroad Company.
Lawndale Railway & Industrial Company.

Live Oak, Perry & Gulf Railroad Company.
Louisville & Wadley Railroad Company.
Macon, Dublin & Savannah Railroad Company.
The Marianna & Blountstown Railroad Company.
Maxton, Alma & Southbound Railroad Company.
Moore Central Railway.
Morgan & Fentress Railway Company.
Muscle Shoals, Birmingham & Pensacola Railway.
The Natchez, Columbia & Mobile Railroad Company.
The Northwestern Railroad of South Carolina.
Oneida & Western Railroad Company.
Pearl River Valley Railroad Company.
The Pickens Railroad Company.
Raleigh & Charleston Railroad Company.
Savannah & Atlanta Railway.
Savannah & Statesboro Railway Company.
Shearwood Railway.
Statesboro Northern Railroad Company.
Sylvania Central Railroad Company.
Tallulah Falls Railway Company.
Tampa and Gulf Coast Railroad Company.
Tampa & Jacksonville Railway Company.
Tampa Northern Railroad Company.
Tavares & Gulf Railroad.
Tennessee, Kentucky & Northern Railroad Company.
Townsville Railroad Company.
The Union Point & White Plains Railroad Company.
Wadley Southern Railway Company.
Ware Shoals Railroad Company.
Washington & Lincolnton Railroad Company.
Wellington & Powellsville Railroad Company.
Wrightsville & Tennille Railroad Company.
Yadkin Railroad Company.

Appendix E

Fourth-section Applications Set for Hearing in Connection With This Proceeding

Filed by—	Application numbers
Aberdeen & Asheboro R. R. C.	4309
Aberdeen & Rockfish R. R. Co.	600
Alabama & Vicksburg Ry. Co	601
Alabama Great Southern R. R. Co	542
Appalachicola Northern R. R. Co	3734
Atlanta & West Point R. R. Co	1024
Atlanta, Birmingham & Atlantic R. R. Co	972
[fol. 115] Atlantic & Western R. R. Co.	2639
Atlantic Coast Line R. R. Co.	703
Augusta Southern R. R. Co.	1546
Bennettsville & Cheraw R. R. Co.	224
Blue Ridge Ry. Co.	1545
Bonlee & Western Ry. Co.	609
Brimstone R. R. & Canal Co. (The)	4147
Brookhaven & Pearl River R. R. Co.	3618 4301
Cadiz R. R. Co.	1919
Carolina & Northwestern Ry.	60

Filed by—	Application numbers
Carolina, Clinchfield & Ohio Ry.	1478
Carolina, Clinchfield & Ohio Ry. of S. C.	1479
Central of Georgia Ry. Co.	1530
Charlotte Harbor & Northern Ry.	4149
Chattahoochee Valley Ry. Co.	1576
Chattanooga Southern R. R. Co.	540
Chesapeake & Ohio Ry. Co. (The)	1747, 1752, 1756
Chesterfield & Lancaster R. R.	4023
Chicago, Memphis & Gulf R. R. Co.	1916
Cincinnati, Burnside & Cumberland River Ry.	3971
Cincinnati, New Orleans & Texas Pacific Ry. Co. (The)	3965, 3966, 3967, 3968
Danville & Western Ry.	1544
Dover & Southbound R. R. Co.	1070
Durham & Charlotte R. R.	225
Durham & Southern Ry. Co.	1047
East Tennessee & Western North Carolina R. R. Co.	4144
Edgmoor & Manetta Ry. Co.	4500
Fernwood & Gulf R. R. Co.	4302, 1912
Fitzgerald, Ocilla & Broxton R. R. Co.	541
Flint River & Northeastern R. R.	222
Florida Central R. R. Co.	115
Florida East Coast Ry.	5095
Florida Ry. Co.	3979
[fol. 116] Gainesville Midland Ry.	117
Georgia & Florida Ry.	789
Georgia, Florida & Alabama Ry. Co.	3692
Georgia Northern Ry. Co.	221
Georgia R. R.	3918
Georgia Southern & Florida Ry. Co.	2029
Georgia Southwestern & Gulf R. R. Co.	4048
Greenville & Knoxville Ry.	1542
Gulf & Ship Island R. R. Co.	484
Gulf Line Ry. Co.	890
Harriman & Northeastern R. R. Co.	3975

Filed by—	Application numbers
Hartwell Ry.	1543
Illinois Central R. R. Co.	2045
Jackson R. R. Co. (The)	1915
Kentucky Midland R. R. Co.	3580
Kentwood & Eastern Ry. Co.	1986
Kinston & Snow Hill R. R. Co.	1676
Kinston, Carolina R. R. & Lumber Co.	2069
Knoxville, Sevierville & Eastern Ry. Co.	1541
Lancaster & Chester Ry. Co.	1540
Lawndale Ry.	3973
Lexington Terminal R. R. Co.	3915
Little River R. R. Co.	1538
Live Oak, Perry & Gulf R. R.	107
Louisville & Nashville R. R. Co.	1952
Louisville, Henderson & St. Louis Ry. Co.	1065
Macon & Birmingham Ry. Co.	2234
Macon, Dublin & Savannah R. R.	782
Mississippi Central R. R. Co.	1555
Mobile & Ohio R. R. Co.	2138
Monroe R. R. Co.	3916
Mount Airy & Eastern Ry. Co.	1483
Nashville, Chattanooga & St. Louis Ry. (The)	458
Natchez, Columbia & Mobile R. R. Co.	1918
New Orleans & Northeastern R. R.	601
New Orleans Great Northern R. R. Co.	4207
New Orleans, Mobile & Chicago R. R. Co. (The)	4948
New Orleans, Natalbany & Natchez Ry. Co.	3930
Norfolk & Western Ry. Co.	1561
[fol. 117] Norfolk Southern R. R. Co.	1074
Northampton & Hartford Ry.	4502
North & South Carolina Ry. Co.	4672
Northern Alabama Ry. Co.	1537
Ocilla, Pinebloom & Valdosta R. R. Co.	2023
Ohio & Kentucky Ry. Co.	4919
Overton County R. R. and Geo. A. Clark, Rec.	3933
Pickens R. R.	1536
Piedmont Ry. Co.	1535
Raleigh & Charleston R. R. Co.	3927
Raleigh & Southport Ry. Co.	1030
Roanoke River Ry.	3925

Filed by—	Application numbers
St. Louis & San Francisco Ry.	799, 2346, 2353
St. Marys & Kingsland R. R. Co.	4642
Sanford & Troy R. R. Co.	220
Savannah & Statesboro Ry. Co.	3931
Seaboard Air Line Ry.	1573
Smithsonia & Dunlap R. R.	4920
South Carolina Western Ry. Co.	5021
South Georgia Ry. Co.	62
Southern Ry. Co.	1548
Southern Ry. Co. in Mississippi	2222
Tallahassee & Montgomery Ry. Co.	1022
Tallulah Falls Ry.	1534
Tampa & Jacksonville Ry. Co.	4641
Tampa Northern R. R. Co.	3548
Tennesse & North Carolina R. R. Co.	3662
Tennessee Ry. Co.	3968
Tombigbee Valley R. R. Co.	1533
Tuskegee R. R. Co.	1023
Union & Glen Springs R. R. Co.	3813
Union Point & White Plains R. R. Co.	3917
Union Springs & Northern Ry. Co.	1476
Virginia & Southwestern Ry. Co.	945
Virginia Ry. Co. (The)	927
[fol. 118] Ware Shoals R. R. Co.	2981
Western Railway of Alabama (The)	1021
Yazoo & Mississippi Valley R. R. Co. (The)	2043
A. D. Hall, Agent	1613

At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 19th Day of July, A. D. 1926.

No. 16295

Fertilizers and Fertilizer Materials Between Southern Points

Orders

It appearing, That by order dated October 7, 1924, the commission entered upon an investigation upon its own mo-

tion under Docket No. 16295, to which investigation the carriers named in the appendix hereto were made respondents, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the respondents herein, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before January 1, 1927, and thereafter to abstain, from publishing, demanding, or collecting their present interstate rates for the transportation of mixed fertilizers, and fertilizer materials as described in Appendix B to the report herein, between all points located in the territory described in Appendix A to said report, to the extent that such rates are found in and by such report to be unreasonable.

It is further ordered, That said respondents, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before January 1, 1927, upon notice to this commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the interstate com-[fol. 119] merce act, and thereafter to maintain for, and apply to, the interstate transportation, in carloads, of mixed fertilizers and fertilizer materials as described in Appendix B to the report herein from and to all points in the territory described in Appendix A to said report, rates in amounts per ton of 2,000 pounds which shall not exceed those shown in the table below, such rates to be subject to a minimum carload weight of 40,000 pounds in the case of mixed fertilizers, and to minimum carload weights not less in any instance than the present minimum nor less than 40,000 pounds in the case of fertilizer materials, with the exception that the minimum for cottonseed hulls shall be 30,000 pounds: Provided, however, That in applying such rates to the longer hauls said respondents may for purposes of tariff simplification, subject to the approval of the commission, use groups of moderate extent and measure the rates by distances to and from fairly representative points in such groups:

	Rate, 1 cents
10 miles and under	100
15 miles and over 10	110
20 miles and over 15	120
25 miles and over 20	125
30 miles and over 25	135
35 miles and over 30	140
40 miles and over 35	150
45 miles and over 40	155
50 miles and over 45	165
55 miles and over 50	170
60 miles and over 55	180
65 miles and over 60	185
70 miles and over 65	195
75 miles and over 70	200
80 miles and over 75	205
85 miles and over 80	210
90 miles and over 85	215
95 miles and over 90	220
100 miles and over 95	225
110 miles and over 100	235
120 miles and over 110	245
[fol. 120] 130 miles and over 120	255
140 miles and over 130	265
150 miles and over 140	275
160 miles and over 150	285
170 miles and over 160	295
180 miles and over 170	305
190 miles and over 180	315
200 miles and over 190	320
210 miles and over 200	330
220 miles and over 210	335
230 miles and over 220	345
240 miles and over 230	350
250 miles and over 240	360
260 miles and over 250	365
270 miles and over 260	375
280 miles and over 270	380
300 miles and over 280	395
320 miles and over 300	410
340 miles and over 320	425
360 miles and over 340	440

	Rate, cents
380 miles and over 360	450
400 miles and over 380	460
420 miles and over 400	470
440 miles and over 420	480
460 miles and over 440	490
480 miles and over 460	500
500 miles and over 480	505
520 miles and over 500	515
540 miles and over 520	525
560 miles and over 540	535
580 miles and over 560	545
600 miles and over 580	555
620 miles and over 600	565
640 miles and over 620	575
660 miles and over 640	585
680 miles and over 660	595
700 miles and over 680	605
720 miles and over 700	615
740 miles and over 720	620
[fol. 121] 760 miles and over 740	630
780 miles and over 760	635
800 miles and over 780	645
825 miles and over 800	655
850 miles and over 825	665
875 miles and over 850	675
900 miles and over 875	685
925 miles and over 900	695
950 miles and over 925	705
975 miles and over 950	715
1,000 miles and over 975	725

In computing distances for the application of the foregoing rates, the shortest routes shall be used over which carload traffic can be moved without transfer of lading.

It is further ordered, That the said respondents, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before January 1, 1927, upon notice to this commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain for, and apply to, the

interstate transportation in carloads of mixed fertilizers and fertilizer materials between points on the so-called short or weak lines set forth in Appendix D to the report herein, including points on the lines of the Columbus & Greenville Railway Company, the Kinston-Carolina Railroad Company, the Carolina Railroad Company, the Gulf, Mobile & Northern Railroad Company, the Birmingham & Northwestern Railway Company, and the Atlanta, Birmingham & Atlantic Railway Company, so long as said carriers remain independent of standard-line control, and between such points and points in the territory described in Appendix A to said report located on standard lines, excepting only the Norfolk Southern Railroad and such short or weak lines as may be under a common control or management with a standard line, rates which shall not exceed rates based upon the scale hereinbefore set forth by more than 50 cents per ton of 2,000 pounds, subject to the minimum carload weights hereinbefore prescribed.

[fol. 122] It is further ordered, That said respondents, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before January 1, 1927, upon notice to this commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain for and apply to the interstate transportation in carloads of mixed fertilizers and fertilizer materials between points on the line of the Norfolk Southern Railroad Company and between such point and points on standard lines in the territory set forth in Appendix A to the report herein, rates which shall not exceed rates based upon the scale hereinbefore set forth by more than 10 per cent, and in no case by any greater amount than 50 cents per ton of 2,000 pounds, subject to the minimum carload weights hereinbefore prescribed.

It is further ordered, That said respondents, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before January 1, 1927, upon notice to this commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain for and apply to the interstate transportation in less than carloads of mixed fertilizers and fertilizer materials between points in the

the territory described in Appendix A to said report, rates which shall not exceed 130 per cent of the corresponding rates hereinbefore prescribed for carload movements.

And it is further ordered, That this order shall remain in force and effect until the further order of this commission.

Fourth Section Order No. 9346

By the fourth-section applications as set forth in Appendix E to the report in Docket No. 16295, Fertilizers and Fertilizer Materials Between Southern Points, carriers parties thereto ask, among other things, for authority to continue to charge rates for the transportation of fertilizers and fertilizer materials from and to all points in [fol. 123] territory hereinafter described, without observing the long-and-short-haul provision of the fourth section of the interstate commerce act. A hearing having been held on the said applications in so far as they relate to the rates hereinafter described, and full investigation of the matters and things involved therein having been had, and the commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That, except as hereinafter otherwise provided, carriers parties to the said applications and other carriers respondents in said Fertilizers and Fertilizer Materials Between Southern Points, having circuitous lines or routes from and to competitive points be, and they are hereby, authorized to establish and maintain over all lines or routes from any point of origin to any point of destination within the territory considered in the report made a part hereof, and as more fully described in Appendix A to the said report, the lowest rates prescribed in the said report for the transportation of fertilizers, and fertilizer materials as described in Appendix B to the said report, as maximum rates over any line or route between said points, and to maintain higher rates from, to, and between intermediate points: Provided, That the rates from, to, and between said intermediate points shall not exceed the scale of rates prescribed in the said report as maximum rates for application at such intermediate points and shall in no case exceed the lowest available combination.

It is further ordered, That the Columbus & Greenville Railway Company, Kinston Carolina Railroad Company, Carolina Railroad Company, Gulf, Mobile & Northern Railroad Company, Birmingham & Northwestern Railway Company, and the Atlanta, Birmingham & Atlantic Railway Company, and the other short and weak line carriers shown in Appendix D to the aforesaid report made a part hereof, and their interested connections, parties to the aforesaid applications, be, and they are hereby, authorized to establish and maintain rates for the transportation of fertilizers and fertilizer materials, as hereinbefore described, between [fol. 124] junction points on their lines and points in the territory hereinbefore referred to, the same as the rates contemporaneously maintained on like traffic between the same points by their standard-line competitors, and to maintain higher rates from and to intermediate points on the said short and weak lines: Provided, That rates at the said intermediate points shall in no case exceed the distance scale of rates prescribed in the aforesaid report made a part hereof plus a differential of 50 cents per ton of 2,000 pounds, and shall in no case exceed the lowest available combination.

It is further ordered, That the Norfolk Southern Railroad and its interested connections, parties to the aforesaid applications, be, and they are hereby, authorized to establish and maintain rates for the transportation of fertilizers and fertilizer materials as hereinbefore described, between junction points on the line of the said Norfolk Southern Railroad and points in the territory hereinbefore referred to, the same as the rates contemporaneously maintained on like traffic between the same points by its standard-line competitors, and to maintain higher rates from and to intermediate points on the said Norfolk Southern Railroad; Provided, That rates at the said intermediate points shall in no case exceed the distance scale of rates prescribed in the aforesaid report made a part hereof by more than 10 per cent, and in no case by any greater amount than 50 cents per ton of 2,000 pounds, and shall in no case exceed the lowest combination.

It is further ordered, That the relief hereinbefore authorized shall be subject to the limitations of a rule in substantially the following form to be incorporated in the tariffs publishing the rates herein referred to:

The rates named in this tariff between any two points apply via all routes composed of lines parties to the tariff over which the distances do not exceed those shown in column 2 below opposite the corresponding rates shown in column 1.

Cents	Column 1, rates per 100 pounds	Column 2, distances, miles
100		17
110		25
120		34
125		42
135		51
140		59
150		68
155		76
165		85
170		93
180		102
185		110
195		119
200		127
205		136
210		144
215		153
220		161
225		170
235		187
245		204
255		221
265		238
275		255
285		240
295		255
305		270
315		285
320		300

(To be continued at same progression as that of scale.)

And it is further ordered, That, except as hereinbefore authorized, all other and further relief prayed for by the aforesaid applications respecting rates on the traffic herein-

before described, be, and the same is hereby, denied, effective January 1, 1897.

By the commission.

——, Secretary.

[fol. 126] Aberdeen and Rockfish Railroad Company; Alabama Central Railroad Company; Alabama Central Railway; The Alabama Great Southern Railroad Company; Alabama Northern Railway Company and R. L. Schuessler, Receiver; Alabama, Tennessee & Northern Railroad Corporation; Alabama and North Western Railroad Company; The Alabama and Vicksburg Railway Company; Albany Southern Railroad Company; Albemarle Steam Navigation Company; Alcolu Railroad Company; The Andalusia, Florida and Gulf Railway Company; Appalachian Railway Company; Appalachicola Northern Railroad Company; Asheville Southern Railway Company; The Asheville and Craggy Mountain Railway Company; Atlanta, Birmingham & Atlantic Railway Company and B. L. Bugg, Receiver; The Atlanta, Stone Mountain & Lithonia Railway Company; Atlanta & St. Andrews Bay Railway Company; Atlanta and West Point Railroad Company; Atlantic Coast Line Railroad Company; Atlantic and Yadkin Railway Company and A. E. Smith and J. W. Fry, Receivers; Augusta-Aiken Railway & Electric Corporation; Augusta Northern Railway; Augusta and Summerville Railroad Company; Augusta-Savannah Line (M. H. Rowse and E. J. Black, owners); Baltimore & Carolina Steamship Company of Baltimore City; The Baltimore & Ohio Railroad Company; The Baltimore & Virginia Steamboat Company; Bamberg, Ehrhardt & Walterboro Railway Company; Batesville Southwestern Railroad Company, Estate of R. J. Darrell, Lessee; Belt Railway Company of Chattanooga; Bennett's North Carolina Line; Bennettsville and Cheraw Railroad Company; Birmingham Belt Railroad Company; Birmingham, Columbus & St. Andrews Railroad Company, and S. A. Alford, Receiver; Birmingham and Northwestern Railway Company; Birmingham, Selma and Mobile Railroad Company; Birmingham Southern Railroad Company; Birmingham & Southeastern Railway Company, and Winton M. Blount, and John T. Cochrane, Receivers; Black Mountain Railroad Company; Blue Ridge Railway Company;

Bonlee & Western Railway Company; Bowdon Railway Company; Buffalo, Union-Carolina Railroad; Buxton Line, Incorporated; Cadiz Railroad Company; Caloosahatchie River Steamboat Company; Carolina Railroad Company; Carolina, Clinchfield and Ohio Railway; Carolina, Clinch-
[fol. 127] field and Ohio Railway of South Carolina; Carolina & Northeastern Railroad Company; Carolina & Northwestern Railway Company; Carolina & Tennessee Southern Railway Company; Carolina Western Railroad; Carrollton & Worthville Railroad Company; Cashie River Line; Central of Georgia Railway Company; Charleston & Western Carolina Railway Company; Charlotte Harbor and Northern Railway Company; The Charlotte, Monroe and Columbia Railroad Company; Chattahoochie Valley Railway; Chesapeake Western Railway; The Chesapeake and Ohio Railway Company; Chesterfield and Lancaster Railroad Company; Chicago, Memphis & Gulf Railroad Company; Cincinnati, Burnside & Cumberland River Railway Company; The Cincinnati, New Orleans & Texas Pacific Railway Company; Cliffside Railroad Company; Clyde Steamship Company; Collins & Glenville Railroad Company; Columbia, Newberry & Laurens Railroad Company; Columbus and Greenville Railway Company; Cumberland Railway Company; The Cumberland Railroad Company, and J. R. Campbell, Receiver; Cumberland Transportation Company; Cumberland & Manchester Railroad Company; Danville and Western Railway Company; DeKalb & Western Railroad Company; The River and South Bound Railroad Company; Durham and Southern Railway Company; East Carolina Railway; The East Tennessee and Western North Carolina Railroad Company; East and West Coast Railway; Eastern Carolina Transportation Company; Edgemoor & Manetta Railway Company; Ensley Southern Railway Company; Elkin & Allegheny Railroad Company; The Evansville & Bowling Green Packet Company; Fernwood, Columbia & Gulf Railroad Company; Flemingsburg & Northern Railroad Company; Flint River and Northeastern Railroad Company; Florida Central and Gulf Railway; Florida East Coast Railway Company; Frankfort and Cincinnati Railway Company; French Broad Railroad Company; Gainesville Midland Railway and Gordon C. Carson and W. B. Veazey, Receivers; Gainesville & Northwestern

Railroad Company; Garyville Northern Railroad Company; Georgia Railroad; Georgia, Ashburn, Sylvester & Camilla Railway Company; Georgia, Florida and Alabama Railway Company; The Georgia Northern Railway Company; Georgia Southern and Florida Railway Company; The Georgia [fol. 128] Southwestern and Gulf Railroad Company; Georgia and Florida Railway, and John Skelton Williams, Receiver; Greene County Railroad Company; Greenville and Northern Railway Company; Gulf, Mobile and Northern Railroad Company; Gulf and Ship Island Railroad Company; Gulf and Southern Steamship Company; Gulfport and Mississippi Coast Traction Company; Hampton & Branchville Railroad and Lumber Company; Harriman and Northeastern Railroad Company; Hartwell Railway Company; High Point, Randleman, Asheboro and Southern Railroad Company; High Point, Thomasville & Denton Railroad Company; Illinois Central Railroad Company; Independent Line Steamers; Interstate Railroad Company; Jackson & Eastern Railway Company; Kentucky & Indiana Terminal Railroad Company; Kentucky & Tennessee Railway; Kentucky, Rockcastle & Cumberland Railroad Company; The Kinston-Carolina Railroad Company; Knoxville & Carolina Railroad Company; Kissimmee River Railway; Kosciusko & South Eastern Railroad Company; Lancaster and Chester Railway Company; Laurel Fork Railway Company; Laurinburg & Southern Railroad Company; Lawndale Railway and Industrial Company; Linville River Railway Company; The Little River Railroad Company; Live Oak, Perry and Gulf Railroad Company; Loranger, Louisiana & Northeastern Railroad Company, and A. Loranger, Receiver; Louisiana Railway & Navigation Company; Louisville, Henderson and St. Louis Railway Company; Louisville, New Albany & Corydon Railroad Company; Louisville and Nashville Railroad Company; Louisville and Wadley Railroad Company; Macon, Dublin and Savannah Railroad Company; Mammoth Cave Railroad Company; Manistee & Repton Railroad Company, Inc., Manteo-Norfolk Transportation Company; The Marianna & Blountstown Railroad Company; Marion & Rye Valley Railway Company; Marion and Southern Railroad Company; Marion, Alma and Southbound Railroad Company; Merchants & Miners Transportation Company; Milltown Air Line

Railway; Milstead Railroad Company; Mississippi & Alabama Railroad Company; Mississippian Railway; Mississippi Central Railroad Company; Mississippi Eastern Railway Company; Mississippi Export Railroad Company; Mississippi Southern Railroad; Mississippi-Warrior Serv-[fol. 129] ice; Mississippi & Western Railroad Company; Mobile and Ohio Railroad Company; Moore Haven and Clewiston Railway Company; Morgan & Fentress Railway Company; Muscle Shoals, Birmingham & Pensacola Railway Company; Nashville & Atlantic Railroad Company; The Nashville, Chattanooga & St. Louis Railway; Nashville Interurban Railway; Natchez, Columbia & Mobile Railroad Company; Natchez & Southern Railway Company; Nelson & Albemarle Railway Company; The New Holland, Higginsport & Mt. Vernon Railroad Company; New Orleans Great Northern Railroad Company; New Orleans, Natalbany and Natchez Railway Company; New Orleans, Texas & Mexico Railway Company; New Orleans and Northeastern Railroad Company; Norfolk Southern Railroad Company; Norfolk & Mobjack Bay Steamboat Company; Norfolk and Portsmouth Belt Line Railroad Company; Norfolk and Washington Steamboat Company; Norfolk and Western Railway Company; Northern Alabama Railway Company; North River Line, Inc., North Western Railroad Company of South Carolina; Norton and Northern Railway; Ocean Steamship Company of Savannah; Ohio & Kentucky Railway Company; Oneida & Western Railroad Company; Paducah & Illinois Railroad Company; Palatka & Jacksonville Steamboat Line; Pearl River Transportation Company; Pearl River Valley Railroad Company; Peninsular and Occidental Steamship Company; The Pennsylvania Railroad Company; Pensacola, St. Andrews and Gulf Steamship Company; The Pickens Railroad Company; Piedmont and Northern Railway Company; Pigeon River Railroad Company; Pontchartrain Railroad Company; Raleigh and Charleston Railroad Company; Randolph and Cumberland Railway Company and J. S. Crews, Receiver; Richmond, Fredericksburg and Potomac Railroad Company; Roanoke Railway Company; Roanoke River Steamboat Company; Rockcastle River Railway Company; Rockingham Railroad Company; Rome & Northern Railway Company;

Rosslyn Connecting Railroad Company; St. Johns River Terminal Company; St. Louis-San Francisco Railway Company; St. Louis & Tennessee River Packet Company; St. Marys Railroad Company; Salmon Creek Line; Sandersville Railroad Company; The Sardis and Delta Rail-
[fol. 130] road Company; Savannah and Atlanta Railway, and Charles E. Gay, Jr., and Thomas B. Felder, Receivers; Savannah and Statesboro Railway Company; Seaboard Air Line Railway Company; Shearwood Railway Company; The Sievern & Knoxville Railroad Company; Smithfield, Newport News & Norfolk Steamship Company; Smithonia & Dunlap Railroad Company; Smoky Mountain Railway Company; The South Georgia Railway Company; Southern Railway Company; State University Railroad Company; Statesboro Northern Railway (Georgia & Florida Railway, John Skelton Williams, Receiver, Lessee); Sumpter & Choctaw Railway Company; Sylvania Central Railway Company; Talbotton Railroad Company; Tallulah Falls Railway Company, and J. F. Gray, Receiver; Tampa Northern Railroad Company; Tampa Southern Railroad Company; Tampa & Gulf Coast Railroad Company; Tampa & Jacksonville Railway Company; Tampa-St. Petersburg Transportation Company; Tavares & Gulf Railroad; Tennessee & Carolina Southern Railway Company; Tennessee Railroad Company; Tennessee, Alabama and Georgia Railroad Company; Tennessee Central Railway Company; Tennessee, Kentucky & Northern Railroad Company; Tennessee River Navigation Company; Tennessee and North Carolina Railway Company; Tennessee Western Railroad Company; Thronateeska Navigation Company; The Townsville Railroad Company; Tri-State Navigation Company; Tuckaseegee & Southeastern Railway Company; Tuskegee Railroad Company; Union Railway Company (Memphis, Tenn.); The Union Point and White Plains Railroad Company; Virginia Blue Ridge Railway Company; Virginia Southern Railroad Company; Virginia Steamship Company; Virginia and Carolina Southern Railroad Company; The Virginian Railway Company; Waccamaw Transportation Company; Wadley Southern Railway Company; Wanchese Line; Ware Shoals Railroad; Warrenton Rail Road Company; Washington-Virginia Railway Company; Washington and Choctaw Railway Company; Washington &

Lincolnton Railroad Company; Washington and Old Dominion Railway; Washington and Vandemere Railroad Company; Waycross and Southern Railroad Company; Waycross & Western Railroad Company; Wellington & Powellsville Railroad Company; The Western Railway of [fol. 131] Alabama; Wilmington, Brunswick & Southern Railroad Company; Winston-Salem Southbound Railway Company; Wrightsville & Tennile Railroad Company; Yadkin Railroad Company; The Yazoo and Mississippi Valley Railroad Company.

EXHIBIT No. 2 TO ANSWER OF THE UNITED STATES—Filed January 12, 1928

EXHIBIT No. 2

12163

INTERSTATE COMMERCE COMMISSION

No. 16295

Fertilizers and Fertilizer Materials Between Southern Points

Decided April 4, 1927

Upon further consideration, found:

1. That various other short or weak line carriers in the Southeast may be accorded the same measure of relief as originally given to this class of carriers in our previous report herein, 113 I. C. C. 389.
2. That the relief granted by fourth-section No. 9346 should be somewhat broadened with respect to the so-called short or weak line carriers.
3. That the Nashville, Chattanooga & St. Louis Railway may add 50 miles as constructive mileage for the river crossing between Hobb's Island and Gunters Landing, Ala.

J. F. Dalton for Norfolk Southern Railroad Company; Henry Thurtell for Nashville, Chattanooga & St. Louis Railway; and J. A. Streyer for members of American Short Line Railroad Association.

J. O. Gill for Jackson & Eastern Railroad Company; G. W. Zipperer for Apalachicola Northern Railroad Company; W. B. Veazey for Gainesville Midland Railway; E. C. Ash for Mississippian Railway; G. C. Dougherty for Milltown Air Line Railway; J. P. White for Cadiz Railroad [fol. 132] Company; LeRoy Morris for Mississippi Central Railroad Company; G. C. Baggett for Washington & Old Dominion Railway; and A. D. Strobhar for St. Marys Railroad Company.

Supplemental Report of the Commission on Further Consideration

EASTMAN, Commissioner:

In our previous report herein, 113 I. C. C. 389, we prescribed a distance scale of rates for the transportation of fertilizers and fertilizer materials over standard lines in southern territory, and, with certain exceptions, authorized an arbitrary of 50 cents per net ton to be added to the standard-line rates between points on certain so-called short or weak lines which we named of record and between points on those lines and points on standard lines, the arbitraries to accrue solely to the short or weak line carriers.

The American Short Line Railroad Association, by petition, now requests similar authority in the case of other short or weak lines, set forth in Appendix DD hereto, which were overlooked in the presentation of the evidence respecting this character of carriers. It is claimed that the testimony of record with respect to short or weak lines applies with equal force to these additional lines and that their financial and traffic conditions are such as to warrant the higher rates sought.

The Washington & Old Dominion Railway, the Apalachicola Northern Railroad, the Mississippian Railway, the Gainesville Midland Railway, the Cadiz Railroad, the Milltown Air Line Railway, the Mississippi Central Railroad, the St. Marys Railroad, and the Jackson & Eastern Railway also ask similar authority and for the same reasons.

The American Short Line Railroad Association, including the Norfolk Southern, further petitions for a revision of fourth-section order No. 9346 hereinbefore entered, so as to allow a somewhat greater degree of relief from the provisions of that section of the act than was granted. The

order as now drawn authorizes these short-line carriers to maintain rates "between junction points" on their lines and points generally in the territory involved, the same as the rates contemporaneously maintained between the [fol. 133] same points by their standard-line competitors. It is pointed out that as the rates between all points are to be determined by the shortest possible distances, in some instances the rates from and to local points on the short or weak lines will be made by routes giving these lines a minimum haul. They seek additional fourth-section relief so that in such instances they may participate in competitive routes which will afford them a longer haul, at the same time maintaining higher rates to and from intermediate points on their lines. They also seek similar relief so that they may participate as intermediary lines in competitive routes between points on standard lines.

All parties to the proceeding have been advised of these petitions, and no objection has been voiced by anyone. Neither were any of the additional short or weak lines referred to in these petitions denied the special treatment accorded that class of carriers in Southern Class Rate Investigation, 100 I. C. C. 513. Under the circumstances we believe that we are justified in granting the prayers of these petitions, including the general amendment of fourth-section order No. 9346. Should any objection be raised later to the relief thus granted, appropriate petition for further hearing may be made.

The Nashville, Chattanooga & St. Louis also petitions for authority to use 50 miles as the constructive mileage in determining rates over its route via Hobb's Island and Gunters Landing, Ala. On its Huntsville branch this carrier operates a car-float transfer of 20 miles along and across the Tennessee River between the points named, and in the Southern Class Rate Investigation, supra, a constructive distance of 50 miles was authorized to be used between these points in determining distances and rates over this route. This carrier now seeks similar authority in this proceeding. The only reference made to this matter in the record is where, after mentioning the situation, the witness of the carrier was asked, "Do you propose to apply straight mileage on that branch, or are you going to have constructive mileage for the river crossing?" To which he replied, "It depends upon what we get

from 13494 [Southern Class Rate Investigation]. The present proposal is straight mileage scale."

[fol. 134] This petition has also been submitted to the parties of record, and no objection has been offered by anyone. On the strength, therefore, of what was done in the Southern Class Rate Investigation, there appearing to be no reason why the same exception should not be made in this case, we find that the Nashville, Chattanooga & St. Louis may use 50 miles as the constructive distances for the crossing referred to.

One other matter has been brought to our attention which should be made clear at this time. In our original report we allowed, as herein stated, an arbitrary of 50 cents per net ton to the so-called short or weak lines, and to the Norfolk Southern we gave authority to charge rates 10 per cent higher than the standard-line scale subject to a maximum of 50 cents per net ton. The question has arisen whether the 50-cent arbitrary can be added for each short line where two or more participate in a particular movement, and also whether, where both the Norfolk Southern and a short line participate in the route of movement, the 10 per cent over the standard-line scale and the 50-cent arbitrary should both be added. A reading of the order entered makes it clear, we believe, that no authority is granted for the addition under any circumstances of more than 50 cents per net ton to the standard-line scale.

In its petition the Norfolk Southern further asks for fourth-section relief in connection with routes which exceed the limits of circuity prescribed in our original order. Other carriers have likewise sought similar additional relief, but in no instance have we made an exception as to the circuity of routes which may engage in the transportation under fourth-section relief. No sufficient reason for an exception has been presented in this case, and the request is therefore denied.

The orders previously entered herein will be amended in accordance with the foregoing conclusions.

Commissioner Campbell dissents.

Appendix DD

The short lines for which relief is now sought are as follows: Alabama Central Railroad, Alcolu Railroad,

Artemus & Jellico Railroad, Ashland Railway Company, [fol. 135] Alabama Central Railway, Appalachian Railway, Augusta Northern Railway, Batesville & Southwestern Railroad, Bonlee & Western Railway, Birmingham, Columbus & St. Andrews Railway, Big Sandy & Kentucky River Railway, Bowdon Railway, Birmingham, Selma & Mobile Railroad, Carolina & Northeastern Railway, Carolina and Georgia Railway Company, Carrollton & Worthville Railroad, Carolina Western Railroad, Cliffside Railroad, Chesapeake Western Railway, Cumberland Transportation Company, DeKalb & Western Railway, Due West Railway Company, Elkin & Allegheny Railroad Company, Edgemoor & Manetta Railroad Company, Fellsmere Railroad, Knoxville & Carolina Railroad Company, Koscinsko & Southeastern Railway, Kentucky Rockcastle & Cumberland Railroad, Louisiana Southern Railway Company, Laurel Fork Railway Company, Little River Railway, Mississippi and Alabama Railroad Company, Mississippi Southern Railroad, Mississippi & Western Railroad, Morehead & North Fork Railroad, Nashville & Atlantic Railroad Company, New Orleans, Natalbany & Natchez Railway, Ohio & Kentucky Railway Company, Pigeon River Railway, Rockcastle River Railway Company, Rockingham Railroad Company, Sanredsville Railroad Company, Sardis & Delta Railroad, Smoky Mountain Railway, Sumter & Choctaw Railway, Talbotton Railway Company, Tennessee Railroad Company, Tuskegee Railroad, Tennessee & North Carolina Railroad, Tuckaseegee & Southeastern Railway, Wilmington, Brunswick and Southern Railway, Warrenton Railroad Company, Washington & Choctaw Railway, Waycross and Southern Railway, Virginia Blue Ridge Railway, and Virginia & Carolina Southern Railway.

At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 4th Day of April, A. D. 1927.

No. 16295

Fertilizers and Fertilizer Materials Between Southern Points

Second Supplemental Order

Upon further consideration of the matters and things involved in the above-entitled proceeding and of the peti- [fol. 136] tions of certain carriers for modification and revision, in certain respects, of the orders entered herein under date of July 19, 1926, as amended by the first supplemental order dated November 23, 1926, and the commission having on the date hereof made and filed a supplemental report herein, which said supplemental report, together with the original report herein, is hereby referred to and made a part hereof:

It is ordered, That the following be, and the same is hereby, substituted for all of that part of said order of July 19, 1926, following the table of rates set forth on page II thereof, to wit:

In computing distances for the application of the foregoing rates, the shortest routes shall be used over which carload traffic can be moved without transfer of lading, except that 50 miles may be used as a constructive distance for the car-float transfer of the Nashville, Chattanooga & St. Louis Railway on the Tennessee River in Alabama between Hobb's Island and Gunters Landing.

It is further ordered, That the said respondents, according as they participate in the transportation, be, and they are hereby, notified and required to establish on or before July 1, 1927, upon notice to this commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain for, and apply to, the interstate transportation in carloads of mixed fertilizers and fertilizer materials between points in the territory described in Appendix A to the original report herein on, or via, the so-called short or weak lines set forth in Appendix D to the original report and in Appendix DD to the supplemental report herein, including the Columbus & Greenville Railway Company, the Kinston-Carolina Railroad Company, the Carolina Railroad Company, the Gulf, Mobile & Northern Railroad Company, the Birmingham & Northwestern Railway Company, the Atlanta, Birmingham & Atlantic Railway Company, the Washington & Old Dominion Railway, the Apalachicola Northern Railroad, the Mississippian Railway, the Gainesville Midland Railway,

the Milltown Air Line Railway, the Cadiz Railroad, the Mississippi Central Railroad, the St. Mary's Railroad, and the Jackson & Eastern Railway, so long as [fol. 137] said carriers remain independent of standard-line control, excepting only the Norfolk Southern Railroad and such short or weak lines as may be under common control or management with a standard line, rates which shall not exceed rates based upon the scale hereinbefore set forth by more than 50 cents per ton of 2,000 pounds, subject to the minimum carload weights hereinbefore prescribed.

It is further ordered, That said respondents, according as they participate in the transportation, be, and they are hereby, notified and required to establish on or before July 1, 1927, upon notice to this commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain for, and apply to, the interstate transportation in carloads of mixed fertilizers and fertilizer materials between points on, or via, the line of the Norfolk Southern Railroad in the territory set forth in Appendix A to the original report herein, rates which shall not exceed rates based upon the scale hereinbefore set forth by more than 10 per cent, and in no case by any greater amount than 50 cents per ton of 2,000 pounds, subject to the minimum carload weights hereinbefore prescribed.

It is further ordered, That said respondents, according as they participate in the transportation, be, and they are hereby, notified and required to establish on or before July 1, 1927, upon notice to this commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain for, and apply to, the interstate transportation in less than carloads of mixed fertilizers and fertilizer materials from and to all points in the territory described in Appendix A to said report, rates which shall not exceed 130 per cent of the corresponding rates hereinbefore prescribed for carload movements.

And it is further ordered, That the said order of July 19, 1926, as herein amended, and as amended by the first supplemental order dated November 23, 1926, shall remain in full force and effect until the further order of this commission.

[fol. 138] Second Supplemental Fourth-Section Order No. 9346

Upon further consideration of the matters and things involved in the fourth-section applications set forth in Appendix E to the original report in Docket No. 16295, Fertilizers and Fertilizer Materials Between Southern Points, 113 I. C. C. 389, and of the petitions of various respondents for a modification of fourth-section order No. 9346 entered July 19, 1926, in said proceeding, as amended by first supplemental fourth section order No. 9346 of November 23, 1926:

It is ordered, That said fourth-section order No. 9346 be amended to read as follows:

It is ordered, That, except as hereinafter otherwise provided, carriers parties to the said applications set forth in Appendix E to the original report in Docket No. 16295, and other carriers respondents in said docket, having circuitous lines or routes between points in the territory described in Appendix A to said original report, which said report is hereby referred to and made a part hereof, be, and they are hereby, authorized to establish and maintain over such circuitous lines or routes the lowest rates prescribed in said original report for the transportation of fertilizers and fertilizer materials as maximum rates between said points, and to maintain higher rates from, to, and between intermediate points; Provided that the rates from, to, and between the intermediate points affected shall not exceed the scale of rates prescribed in said original report as maximum rates for application at such intermediate points, and shall in no case exceed the lowest available combination.

It is further ordered, That the Columbus & Greenville Railway Company, Kinston-Carolina Railroad Company, Carolina Railroad Company, Gulf, Mobile & Northern Railroad Company, Birmingham & Northwestern Railway Company, Atlanta, Birmingham & Atlantic Railway Company, Washington and Old Dominion Railway, Apalachicola Northern Railroad, Mississippian Railway, Gainesville Midland Railway, Milltown Air Line Railway, Cadiz Railroad, Mississippi Central Railroad, St. Marys Railroad,

[fol. 139] and the Jackson & Eastern Railway, and the other short and weak line carriers set forth in Appendix D to the original report and Appendix D to the supplemental report in Docket No. 16295, which said reports are hereby referred to and made a part hereof, and their interested connections, parties to the aforesaid applications, be, and they are hereby, authorized to establish and maintain rates for the transportation of fertilizers and fertilizer materials between all points in the territory described in Appendix A to said original report the same as the rates contemporaneously maintained on like traffic between the same points via competing lines or routes, and to maintain higher rates from, to, and between intermediate points on the said short or weak lines: Provided that rates at the said intermediate points shall in no case exceed the distance scale of rates prescribed in the said original report plus a differential of 50 cents per ton of 2,000 pounds, and shall in no case exceed the lowest combination.

It is further ordered, That the Norfolk Southern Railroad and its interested connections be, and they are hereby, authorized to establish and maintain rates for the transportation of fertilizers and fertilizer materials between all points in the territory described in Appendix A to the said original report the same as the rates contemporaneously maintained on like traffic between the same points via competing routes and to maintain higher rates from, to, and between intermediate points on the line of said Norfolk Southern Railroad and the line or lines of any short or weak line carrier participating in the route: Provided that rates at the said intermediate points shall not exceed the distance scale of rates prescribed in the said original report by more than 10 per cent, subject to a maximum of 50 cents per ton of 2,000 pounds when the Norfolk Southern Railroad alone participates in the movement or in connection with standard-line carriers; and Provided further that the rates at the said intermediate points shall in no case exceed said distance scale of rates by more than 50 cents per ton of 2,000 pounds, and shall in no case exceed the lowest combination.

It is further ordered, That the relief hereinbefore authorized shall be subject to the limitations of a rule in sub-

stantially the following form to be incorporated in the tariffs publishing the rates herein referred to:

[fol. 140] The rates named in this tariff between any two points apply via all routes composed of lines parties to the tariff over which the distances do not exceed those shown in column 2 below opposite the corresponding rates shown in column 1.

Column 1, rates per ton of 2,000 pounds	Column 2, distances, miles
100 cents	17
110 cents	25
120 cents	34
125 cents	42
135 cents	51
140 cents	59
150 cents	68
155 cents	76
165 cents	85
170 cents	93
180 cents	102
185 cents	110
195 cents	119
200 cents	127
205 cents	136
210 cents	144
215 cents	153
220 cents	161
225 cents	170
235 cents	187
245 cents	204
255 cents	221
265 cents	238
275 cents	255
285 cents	255
295 cents	255
305 cents	270
315 cents	285
320 cents	300

(To be continued at same progression as that of scale.)

[fol. 141] And it is further ordered, That, except as hereinbefore authorized, all other and further relief prayed for

by the aforesaid applications respecting rates on the traffic hereinbefore described, be, and the same is hereby, denied, effective July 1, 1927.

By the commission.

George B. McGinty, Secretary. (Seal.)

EXHIBIT No. 3, TO ANSWER OF THE UNITED STATES—Filed January 12, 1928

EXHIBIT No. 3

12505

INTERSTATE COMMERCE COMMISSION

No. 16295

Fertilizers and Fertilizer Materials Between Southern Points

Decided July 5, 1927

Upon further consideration, found:

1. That fourth-section order No. 9346 should be amended to authorize carriers operating circuitous routes to meet the rates of the direct lines and to maintain higher rates from and to intermediate points although such rates may exceed the scale prescribed in our original report, 113 I. C. C. 389, if strictly applied.
2. That the petition of the Carolina Railroad for relief from the long-and-short-haul provision of the fourth section with respect to rates to Snow Hill, N. C., should be denied.
3. That the Nelson & Albemarle Railway Company, the Linville River Railway Company, and the Atlanta & St. Andrews Bay Railway Company should be permitted to charge rates 50 cents per ton in excess of the standard-line scale prescribed in our original report.

[fol. 142] 4. That the petitions of the Louisville & Nashville on behalf of the Glasgow Railway Company and the Elkton & Guthrie Railroad Company for authority to charge 50 cents per ton in excess of the standard-line scale should be denied.

B. G. Brown and Charles Barham for various southeastern carriers; J. F. Dalton for Carolina Railroad Company; James Menzies for Atlantic Coast Line Railroad Company; J. A. Streyer for Nelson & Albemarle Railway Company and Linville River Railway; H. W. Wolf for Atlanta & St. Andrews Bay Railway Company; and E. A. de Funiak for Glasgow Railway Company and Elkton & Guthrie Railroad Company.

Second Supplemental Report of the Commission on Further Consideration

EASTMAN, Commissioner:

In our original report herein, 113 I. C. C. 389, we prescribed a distance scale of rates on fertilizers and fertilizer materials within southern territory, and said, at page 424:

* * * in applying such rates to the longer hauls the respondent carriers may for purposes of tariff simplification, subject to our approval, use groups of moderate extent and measure the rates by distances to and from fairly representative points in such groups.

It appears that in the maintenance of groups under the foregoing authority, the rates between various points will be somewhat higher than they would be if the scale were strictly applied on a point-to-point basis. Such departures from the scale were forbidden in fourth-section order No. 9346, issued in connection with our original report, and the carriers now ask that that order may be amended so that it will not interfere with the grouping plan. No objection to such an amendment has come to our attention, and in order that reasonable groupings may be maintained some leeway in this respect seems to be necessary. We note, however, that in quite a number of instances the rates will exceed the strict scale basis by as much as 20 cents per ton, and in a few instances by still

[fol. 143] greater amounts. This goes beyond what we understood would be the limit of departure from the scale, and beyond what seems to be reasonably necessary.

Fourth-section order No. 9346 will be amended to permit the maintenance of rates from and to intermediate points on circuitous routes in excess of the scale basis strictly applied, but subject, however, to the limitation that on and after September 20, 1927, such rates shall not exceed the scale basis by more than 15 cents per ton.

The Carolina Railroad, a company controlled through stock ownership by the Norfolk Southern, extends from Kinston, N. C., its junction with the Norfolk Southern, and the Atlantic Coast Line, 15 miles northwesterly to Snow Hill, N. C, its terminus. Six miles to the east is the line of the East Carolina Railway, which reaches this section from the north and connects with the Norfolk Southern at Farmville, N. C., and with the Atlantic Coast Line at Tarboro, N. C. Maury and Hookerton, N. C., are local stations on the East Carolina, situated almost opposite Snow Hill, Hookerton being the terminus of the line and 13 miles south of Farmville. Dealers at Maury, Hookerton, and Snow Hill compete actively, it is stated, in the intervening farming country. The Carolina Railroad asks for authority to maintain the same rates on fertilizers and materials to Snow Hill as are contemporaneously in effect to Maury, and to maintain rates to the intermediate stations on the basis prescribed in our original report. It is proposed, for example, to maintain a rate from Norfolk, Va., to Snow Hill of $2.65 per ton, this being the rate in effect to Maury and Hookerton, and to maintain a rate of $3.45 to the first station intermediate to Snow Hill.

The Carolina Railroad is in poor financial condition. In 1926 its railway operating income was only $2,715 and it had a deficit in net income of $4,690. In our original report we authorized it to charge 50 cents per ton over and above the standard-line rates, but the full amount of this arbitrary does not accrue to it on traffic interchanged with the Norfolk Southern by reason of the fact that the arbitrary, under our order, is prorated with the latter line. The petitioner shows that for the four years, 1923 to 1926, and for the first four months of 1927, there was a [fol. 144] total movement of fertilizer to Snow Hill of 21,050

tons, and to the six intermediate stations on its line of 8,010 tons. It bears the loss of the greater portion of the tonnage to Snow Hill if its rates to that point are not reduced to meet the rates in effect to Maury, inasmuch as the highways in this section are in good condition and the farmers are likely to go to Maury for their fertilizer if the price is more favorable there than at Snow Hill. On the other hand, petitioner does not wish to reduce the rates to the intermediate points in order to conform to the provisions of the fourth section.

The relief sought is objected to by the Atlantic Coast Line. That carrier points out that there is considerably more territory tributary to Snow Hill than to Maury, and contends that if the farmers would go to farther distant points for their fertilizer because of the higher price at Snow Hill, they would probably go to Farmville instead of to Maury, as the highway to the former is in better condition and the saving in price would be still greater. From our understanding of the situation, also, it seems improbable that the entire tonnage to Snow Hill is used in the territory between that station and Maury; it is more likely that a considerable portion is used in the section west of Snow Hill and is less subject, therefore, to the competition at Maury.

We are not convinced that the relief sought is necessary or desirable under the circumstances, and the petition will therefore, be denied.

In our original report we authorized certain short or weak line carriers to charge 50 cents per ton over and above the standard-line scale, and this arbitrary is now sought by the Nelson & Albemarle Railway, the Linville River Railway, the Atlanta & St. Andrews Bay Railway, and by the Louisville & Nashville on behalf of the Glasgow Railway and the Elkton & Guthrie Railroad. The first three carriers named above are in poor financial condition, and from a traffic standpoint are said to be in the same position as are the lines that were accorded the arbitrary basis under our original order. No objection has been offered to the relief sought, and we see no reason why a supplemental order should not be entered authorizing these lines to maintain the higher basis.

[fol. 145] Both the Glasgow Railway and the Elkton & Guthrie connect with the Louisville & Nashville, and are

operated by that carrier under leases whereby it turns over to them the net profits that accrue through their operation. It is understood that the Louisville & Nashville sustains any loss that may occur. Neither the Glasgow nor the Elkton & Guthrie files tariffs with us, nor does either participate in tariffs filed by other lines. They are operated, apparently, as a part of the Louisville & Nashville system. Furthermore, it is not shown that the Glasgow Railway is in financial difficulties. In this connection, attention may be called to the fact that in Stock of Glasgow Ry., 117 I. C. C. 578, we authorized it to issue a stock dividend of $100,000. The relief sought by these lines will be denied.

Appropriate orders will be entered.

At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 5th Day of July, A. D. 1927

No. 16295

Fertilizers and Fertilizer Material Between Southern Points

Fifth Supplemental Order

Upon further consideration of the matters and things involved in the above-entitled proceeding, and of the petitions of various carriers for modification of our previous findings and orders herein;

It is ordered, That the terms of the orders entered in connection with the original report in the above-entitled proceeding under date of July 19, 1926, and as subsequently amended, shall apply to the Atlantic & St. Andrews Bay Railway Company, the Linville River Railway Company, and the Nelson & Albemarle Railway Company to the same extent and in the same manner as they do to the carriers included in Appendix DD to the supplemental report of April 4, 1927.

[fol. 146] It is further ordered, That the petitions of the Louisville & Nashville Railroad Company on behalf of the Elkton & Guthrie Railroad Company and the Glasgow Railway Company for authority to charge 50 cents per ton for

the transportation of fertilizers and fertilizer materials in addition to the standard-line scale prescribed in our original report herein, be, and the same are hereby, denied.

It is further ordered, That the petition of the Carolina Railroad Company, dated June 10, 1927, seeking relief from the provisions of the fourth section of the act in connection with rates on fertilizers and fertilizer materials to Snow Hill, N. C., be, and the same is hereby, denied.

Fourth Supplemental Fourth-Section Order No. 9346

Upon consideration of the joint petition of B. G. Brown and Charles Barham on behalf of various carriers parties to the above entitled proceedings, and good cause appearing therefor:

It is ordered, That fourth-section order No. 9346 of July 19, 1926, as subsequently amended, be, and the same is hereby, further amended by adding thereto the following paragraph:

It is further ordered, That should the carriers parties to the above-entitled proceeding, in maintaining the rates herein prescribed, establish groups of destination or origin points, and the circuitous lines or routes shall meet the rates of more direct routes from or to points in said groups, they may maintain higher rates from and to intermediate points even though such rates shall exceed the rates prescribed for the distances involved, provided, however, that in no case shall the rates at such intermediate points exceed the rates prescribed by more than 15 cents per ton on and after September 20, 1927.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 147] In United States District Court

[Title omitted]

Intervention of Interstate Commerce Commission—Filed January 18th, 1928.

To the Honorable the Judges of said Court:

In accordance with the provisions of section 212 of the Judicial Code, 36 Stat. L. 1150, we hereby enter the appear-

ance of the Interstate Commerce Commission, as a party defendant, and of ourselves as its counsel, in the above entitled suit.

P. J. Farrell, E. M. Reidy.

IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF THE INTERSTATE COMMERCE COMMISSION—Filed January 18th, 1928

The Interstate Commerce Commission, intervening defendant in the above-entitled suit, hereinafter called the Commission, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the petitioners' petition contained, for answer thereunto, or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering Paragraphs 1 and 2 of the petition, the Commission admits that the allegations therein contained are true.

II

Answering Paragraph 3 of the petition, the Commission admits that it made and entered the order of October 3, 1927, in a consolidated proceeding entitled "Fertilizers and Fertilizer Materials Between Southern Points"; that said proceeding included dockets of the Commission numbered [fol. 148] 16295 and 16336; that said order was made in the docket numbered 16336; that said order was and is based upon findings of fact made and entered by the Commission in its report of July 19, 1926; that the citation of said report is 113 I. C. C. 389, and that the Commission made and entered the other reports and the order of July 5, 1927, referred to in said paragraph, but the Commission denies that "Exhibit A" to the petition contains all of said report of July 19, 1926, which is material in this suit.

III

Answering Paragraph 4 of the petition, the Commission admits that said suit was instituted under the Constitution and laws of the United States, but denies that the suit was instituted under sections of the United States Code as stated in said paragraph, except to the extent that said sections are in harmony with the act of Congress approved October 22, 1913, 38 Statutes at Large, pages 219 and following.

IV

Answering Paragraphs 6 to 27, inclusive, of the petition, the Commission admits and alleges that said order of October 3, 1927, was duly served upon the parties therein named; that said order was made and entered in said consolidated proceeding pursuant to complaint filed in the Commission's office and numbered as aforesaid 16336; that said complaint contained allegations of fact substantially as set forth in paragraph 6 of the petition; that, prior to making, entering and serving as aforesaid said report of July 19, 1926, and said order of October 3, 1927, the Commission accorded to all parties to said consolidated proceeding, including the petitioners herein, at hearings in said proceeding, a full and fair opportunity to be heard upon all subject-matters covered by the aforesaid complaint in said docket numbered 16336; that at said hearings a large volume of testimony and other evidence bearing upon said matters was submitted to the Commission for consideration on behalf of said parties, including the petitioners herein, by their respective counsel; that at said hearings and subsequently, both orally and in briefs filed in said proceeding, questions relating to said matters were fully argued and submitted [fol. 149] to the Commission for determination, on behalf of said parties by their respective counsel, whereupon the Commission determined said matters and made and entered said report of July 19 and said order of October 3, which report and order included the Commission's decision, conclusions, orders, and requirements in the premises; and that upon the evidence aforesaid, and as shown in and by said report of July 19 and said order of October 3, the Commission made the findings, stated the conclusions, and prescribed the rules and regulations, and terms and conditions upon which said order of October 3 is based.

The Commission further alleges that said findings, conclusions, rules and regulations, and terms and conditions were and are, and that each of them was and is, fully supported by the evidence submitted to the Commission in said proceeding as aforesaid, and the Commission denies each of and all the allegations to the contrary contained in the petition.

Further answering Paragraph 25 of the petition, the Commission alleges that the allegation that said order of October 3, 1927, "does not cover all the railroads doing an intrastate business in the transportation of fertilizers and fertilizer materials within the State of Alabama" is irrelevant and immaterial, and the Commission denies each of and all the other allegations contained in said paragraph.

Further answering Paragraph 27 of the petition, the Commission denies that either in its opinion, or its findings, or its conclusions, or its orders, or its judgments, the Commission acted either arbitrarily, or contrary to law, or contrary to the evidence, or without evidence to support its action in the premises, for the reasons, or for any of the reasons, set forth in said paragraph, or for any other reason.

The Commission further alleges that, in making said order of October 3, 1927, it considered and weighed carefully, in the light of its own knowledge and experience, every fact, circumstance, and condition called to its attention on behalf of the parties to said consolidated proceeding, by their respective counsel, including all matters covered by the material allegations of the petition herein.

The Commission further alleges that said order of October 3 was not made and entered either arbitrarily, or un-
[fol. 150] justly, or contrary to the relevant evidence, or without evidence to support it; that in making said order the Commission did not exceed the authority which had been duly conferred upon it, or exercise that authority in an unreasonable manner; and the Commission denies each of and all the allegations to the contrary contained in the petition.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the petition, in so far as they conflict either with the allegations herein or with either the statements or conclu-

sions of fact included in said report of July 19, 1926, and said order of October 3, 1927, which report and order are hereby referred to and made a part of this answer.

All of which matters and things the Commission is ready to aver, maintain, and prove as this honorable court shall direct, and hereby prays that the petition herein be dismissed.

Interstate Commerce Commission, by E. M. Reidy, Attorney. P. J. Farrell, of Counsel.

Duly sworn to by Joseph B. Eastman. Jurat omitted in printing.

IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF ALABAMA GREAT SOUTHERN RAILROAD COMPANY ET AL.—Filed January 20th, 1928

The joint and several answer of defendants, The Alabama Great Southern Railroad Company, Mobile and Ohio Railroad Company, Northern Alabama Railway Company, and Southern Railway Company.

Now come the following named defendants, who are common carriers by railroad, to-wit, the Alabama Great Southern Railroad Company, Mobile & Ohio Railroad Company, Northern Alabama Railway Company, and Southern Railway Company, by their solicitors, and for answer to the matters and things set forth in the petition filed in the above entered cause against them and others as defendants, answering, say:

[fol. 151] I

Defendants admit the allegations of paragraph I concerning the State of Alabama. They admit that the Alabama Public Service Commission is a commission created under the laws of the State of Alabama, with limited powers, and such only as are conferred by the statutes of Alabama in regard to the regulation of strictly intrastate rates between points in Alabama; but the powers so delegated to said Alabama Public Service Commission in re-

gard to the regulation of intrastate rates can only be exercised subject to the paramount power of Federal regulation, as exercised by the Interstate Commerce Commission under the Acts of Congress known as the Interstate Commerce Act, as amended; and these defendants aver that the Constitution of the United States and the laws of Congress passed pursuant thereto with respect to rates, fares, and charges, whether interstate or intrastate, are superior in authority to the laws of the State of Alabama, or the regulation of rates by the Alabama Public Service Commission, wherever such laws or state regulation come into conflict with the Federal power and the discharge of the duties imposed upon the Interstate Commerce Comsion by the Acts of Congress known as the Interstate Commerce Act, as amended.

Defendants admit that the Alabama Public Service Commission was made a party to the proceedings before the Interstate Commerce Commission in which the order of said Commission, attacked in said petition, was entered; and they aver that said Alabama Public Service Commission took an active part, and participated throughout, in said hearings and proceedings before the Interstate Commerce Commission in its Docket No. 16295, Fertilizer and Fertilizer Materials Between Southern Points, and other cases heard therewith, including Docket No. 16336, entitled In the Matter of Rates on Fertilizers and Fertilizer Materials and Articles Taking the Same Rates Intrastate Within the State of Alabama.

II

Defendants admit the allegations of paragraph II, in so far as said allegations relate severally to them; and they aver that they are engaged in transporting persons and [fol. 152] property not only between points in the State of Alabama, but they are likewise engaged as common carriers of freight and passengers transported over their rails in interstate commerce from, to, and between points in the state of Alabama and points in other states of the United States, as well as in the handling of foreign commerce.

III

Answering paragraph III, defendants admit that the order complained of in the petition grew out of a general investigation ordered and held by the Interstate Commerce Commission concerning rates on fertilizer and fertilizer materials within southern territory, being Docket No. 16295, and entitled Fertilizer and Fertilizer Materials between Southern Points, which general investigation was conducted by the Interstate Commerce Commission and included within its scope rates from, to, and between points in southern territory, as in its said reports and findings more particularly described. There were consolidated and heard therewith certain other cases concerning intrastate rates on fertilizer and fertilizer materials, including Docket No. 16336, entitled In the Matter of Rates on Fertilizers and Fertilizer Materials and Articles Taking the Same Rates Intrastate Within the State of Alabama.

Defendants admit that on July 19, 1926, the Interstate Commerce Commission rendered a report in said general investigation of fertilizer rates and in the consolidated cases heard therewith, officially reported in 113 I. C. C., beginning at page 389, and later made certain supplemental reports and orders in said proceedings, the one dated April 4, 1927, officially reported in 123 I. C. C., beginning at page 193, and the other dated July 5, 1927, and officially reported in 129 I. C. C., 215; but defendants deny that all of said original report, material to an understanding of this case, is set out in "Exhibit A" with the petition; and to the end that this Court may have before it the complete text of the said original report and accompanying order, there is now filed herewith, marked "Exhibit No. 1," a duly certified copy of said original report and order dated July 19, 1926, in Docket No. 16295, which exhibit is asked to be read with and as a part of this answer. Duly certified copies of the said supplemental reports of the Com-
[fol. 153] mission in the same proceeding, dated April 4, 1927, and July 5, 1927, are likewise filed herewith, marked "Exhibit No. 2," and "Exhibit No. 3," respectively, and are asked to be read with, and as a part of, this answer.

Defendants admit that "Exhibit B" with the petition is a copy of the order entered July 5, 1927, in said proceed-

ing in connection with the supplemental report of that date, a copy of which is above exhibited as Exhibit No. 3.

Defendants admit that on October 3, 1927, the Interstate Commerce Commission made and entered its order in Docket No. 16336, a copy whereof is filed as "Exhibit C" with the petition, which is the order attacked and sought to be enjoined in said petition. Defendants aver that, as shown by the original report in Docket No. 16295, Fertilizer and Fertilizer Materials between Southern Points, 113 I. C. C., at page 389, a certified copy whereof is filed with this answer, the said proceeding known as Docket No. 16336, In the Matter of Rates on Fertilizers and Fertilizer Materials and Articles Taking the Same Rates Intrastate within the State of Alabama, along with other cases, was consolidated and heard with said principal case, hereinafter referred to as the General Investigation of Fertilizer Rates, upon one record, all of said cases being consolidated and disposed of in the reports above referred to and the accompanying orders, including said last mentioned order of October 3, 1927, directed at the intrastate rates in Alabama, being the order attacked in this proceeding, and a copy whereof is filed as Exhibit C with said petition.

IV

The allegations of paragraph 4 concern matter of law solely, but defendants deny the allegation that "the jurisdiction of said court depends upon the fact that this action arises under the Constitution and laws of the United States."

V

Answering paragraphs numbered 5, 6, and 7:

Defendants admit the allegations of paragraph 5 of said petition, as to the institution by the Alabama Public Service Commission, in September, 1921, of an investigaton [fol. 154] into freight rates on many commodities moving between points in the state of Alabama; and that on or about, to-wit, the 26th day of May, 1924, the Alabama Public Service Commission undertook to prescribe two scales of mileage rates applicable on carload movements of fertilizer and fertilizer materials, which scales said Commission undertook to have applied intrastate over standard

lines within the state of Alabama, and that "Exhibit D" with said petition is a copy of said scales, as prescribed by said Alabama Commission; and that in the same order said Commission undertook to prescribe rates on fertilizer and fertilizer materials moving in less-than-carload quantities, making the same 120 per cent of the carload rates.

Said order issued by the Alabama Commission under date of May 26, 1924, was, by its terms, to be made effective sixty days from the date thereof, making the effective date of said order July 26, 1924. Defendants aver however, that they never acquiesced in the said order, or the rates therein prescribed, and promptly sought, through the method provided by law, to have the Interstate Commission correct the situation complained of and to prevent the violations of Federal law and the sacrifice of revenues brought about and produced by compliance with said order; and to that end defendants promptly prepared, under date of July 30, 1924, a petition before the Interstate Commerce Commission filed on August 6, 1924, and given its Docket Number 16336, wherein it was set forth that the rates prescribed by the Alabama Public Service Commission on fertilizer and fertilizer materials and articles taking the same rates in its said order of May 26, 1924, for intrastate application between points in Alabama, were unduly and unreasonably low, and were materially lower than interstate rates on fertilizer and fertilizer materials which had theretofore been prescribed by the Interstate Commerce Commission in cases theretofore heard by it, and were even lower than the intrastate rates formerly in effect in Alabama. In said petition it was set forth and alleged that said unusually and unreasonably low intrastate rates so prescribed by the Alabama Commission were unlawful and would cause and give an undue and unreasonable advantage and preference to persons and localities using said unreasonably low Alabama intrastate rates, and [fol. 155] would unjustly discriminate against against and unduly prejudice persons and localities shipping fertilizer and fertilizer materials in interstate commerce and would create the undue, unreasonable, and unjust discrimination against interstate commerce forbidden and declared to be unlawful by the Interstate Commerce Act, as amended. This is the complaint or petition referred to in the para-

graph numbered 6 of said petition here, and a true copy of said petition, which was filed by these defendants and other standard lines operating in the State of Alabama, with the Interstate Commerce Commission on Aug. 6th, 1924, and given its Docket No. 16336, is herewith filed, marked "Exhibit No. 4," and is asked to be read with and as a part of this answer. Defendants admit that after the filing of the said petition, said Interstate Commerce Commission, acting thereon, instituted an investigation under its said Docket No. 16336, entitled "In the Matter of Rates on Fertilizers and Fertilizer Materials and Articles Taking the Same Rates Intrastate within the State of Alabama, as per its order of the 14th day of October, 1924, a duly certified copy whereof is herewith filed, marked "Exhibit No. 5," and is asked to be read with and as a part of this answer, which investigation was later consolidated and heard along with the General Investigation of Fertilizer Rates inaugurated by the Interstate Commerce Commission under its Docket No. 16295.

VI

Answering paragraph 8 of said petition, these defendants specifically deny the allegations thereof to the effect that the issue presented by the complaint filed by defendants in Docket No. 16336 and the investigation ordered by the Commission in said docket under date of October 14, 1924, were limited in their scope solely to an alleged violation of Section 3 of the Interstate Commerce Act, as amended, or that said issue "was limited to specific rates complained of in said complaint." The complaint alleged and set forth facts showing violations of Section 3, and sub-divisions 3 and 4 of Section 13, and also of Section 15 (a) of the Interstate Commerce Act, as amended by the Transportation Act, 1920, and the Interstate Commerce Com-[fol. 156] mission, by its order of October 14, 1924, (copy whereof is exhibited herewith as Exhibit No. 5) instituted and ordered an investigation—

"To determine whether the rates on fertilizers and fertilizer materials required by the Alabama Public Service Commission to be maintained by said railroads, cause or will cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in in-

trastate commerce on the one hand and interstate commerce or foreign commerce on the other hand or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce; and as to what rates, if any, or what maximum or minimum, or maximum and minimum shall be prescribed to be charged by the petitioners, in order to remove such advantage, preference, prejudice, or discrimination, of any, as may be found to exist."

These defendants aver that, by the provisions of Section 13(4), the Interstate Commerce Commission was not only justified and required, upon the facts, to inaugurate such investigation and to hold hearings, but it was thereby required to—

"Prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, or discrimination."

Defendants, therefore, deny specifically that the sole issue before the Commission was an alleged violation of Section 3, or that the issue was limited "to the specific rates complained of in said compiaint;" and they aver that the investigation ordered by said Commission, by its said order of the 14th day of October, 1924, was not so limited in its scope, but contemplated not only an investigation of the matters and things complained of, falling within the scope of the complaint, but as outlined in its said order, the fixing of rates for the future and charges regulations, and practices thereafter to be observed in consonance with the provisions, not only of Section 3, but of Section 13 (3) and (4), and 15 (a), as well as the other provisions of the Interstate Commerce Act, as amended; notice of which proceeding, [fol. 157] so inaugurated by the Interstate Commerce Commission, was given to the Governor of the State of Alabama and to the Alabama Public Service Commission, and which proceeding was consolidated and thereafter heard with the General Investigation of Fertilizer Rates under Docket No. 16295, wherein the Interstate Commerce Commission later promulgated and fixed the scale of fertilizer rates and fixed the level of such rates for application throughout southern territory.

VI

Answering paragraphs 9 and 10 of the petition, these defendants admit that Docket No. 16336, covering the investigation ordered by the Interstate Commerce Commission by its order of October 14, 1924, into the matter of rates on fertilizers and fertilizer materials intrastate within the state of Alabama, with similar investigations relating to intrastate rates in other states, was consolidated with the General Investigation of Fertilizer Rates, Docket No. 16295, and that the investigations concerning rates in other states, consolidated and heard with said general investigation, included not only the Alabama intrastate rates under Docket 16336, but likewise Docket No. 16335. In the Matter of Rates on Fertilizers and Fertilizer Materials intrastate within the State of South Carolina; Docket No. 16484. In the Matter of Rates on Fertilizers and Fertilizer Materials and Articles Taking the Same Rates Intrastate within the State of Georgia; and also varies fourth section applications listed in Appendix E to the report of the Interstate Commerce Commission in said general investigation, 113 I. C. C. 389. Defendants admit that, in said Docket No. 16295, a general investigation was ordered by the Interstate Commerce Commission under date of October 7, 1924, and has been heretofore, and will be hereafter, referred to as the General Investigation of Fertilizer Rates. The scope of said general investigation, so ordered, will be disclosed by reference to a certified copy of said order herewith filed, marked "Exhibit No. 6," and asked to be read with and as a part of this answer; and as illustrating further the scope of said investigation and some of the purposes sought to be accomplished thereby and there-
[fol. 158] under, in connection with the cases involving intrastate rates in Alabama, Georgia, and South Carolina, there is likewise filed herewith, marked "Exhibit No. 7," and asked to be read with and as a part of this answer, a duly certified copy of the notice issued March 9, 1925, in said Docket No. 16295 and consolidated cases. From the two exhibits last mentioned as well as from the report of the Interstate Commerce Commission in it said Docket No. 16295, 113 I. C. C. 389, it will be seen that this investigation concerned rates and fertilizer and fertilizer materials throughout southern territory, as defined in the citation

and in Appendix A to said last mentioned report. In the notice issued under date of March 9, 1925, outlining the procedure and indicating some of the subjects to which the evidence should be directed, it is stated:

"This investigation was deemed advisable because of widespread differences in the rates for substantially similar hauls, numerous departures from the long-and-short-haul provision of the fourth section, lack of uniformity between the general levels of the interstate rates and the intrastate rates in several of the States, and the frequent complaints with reference to the rates. The purpose of the proceeding is to determine upon a basis of rates for interstate application throughout the territory involved which will be reasonable for the transportation of this particular traffic, will be free from undue prejudice and preference, and will conform to the fourth section of the act. With the proceeding there have been consolidated for hearing investigations under section 13 of the act instituted upon petition of carriers and involving alleged undue preference of intrastate traffic in Alabama, South Carolina, and Georgia, and alleged undue prejudice to interstate traffic. While other intrastate rates have not been brought in issue the desirability of fixing interstate rates which can fairly and appropriately be used as a basis for achieving harmony between the interstate and intrastate rates will be kept constantly in mind. With this end in view, testimony relating to intrastate adjustments will be freely admitted."

Defendants aver, therefore, that at the outset of this general investigation the parties were notified of the purpose of the Commission to investigate the rates on [fol. 159] fertilizer and fertilizer materials throughout southern territory, with a view to fixing a reasonable and just level of rates for the transportation of this traffic, whether moved in interstate or intrastate commerce, and, having so fixed and prescribed the level of interstate rates, the scale of rates used in determining the same was to be used "as a basis for achieving harmony between interstate and intrastate rates," particularly in view of the fact that the intrastate rates in effect in Alabama, in South Carolina, and in Georgia, were under review as result of the separate investigations of those intrastate rates inaugurated by the

Commission on complaints of the railroads, and consolidated with said general investigations.

Defendants deny the allegation of paragraph 10 that only—

"some portion of the intrastate rates in Alabama were attacked, as abovesaid, on the ground that they were in violation of section 3 of the Acts to Regulate Commerce."

and they aver that the intrastate rates in Alabama were specifically brought in issue by the complaint filed by the railroads, attacking said rates, and that they were involved in said Docket No. 16336 and the investigation thereunder ordered by the Interstate Commerce Commission, not merely under Section 3, but under Section 13 (3) and (4), as well as under Section 15a of the Interstate Commerce Act, as amended, in connection with the general investigation and the consolidated cases heard therewith, and that, therefore, the scope of the investigation concerning the intrastate rates in Alabama was wider than that alleged in paragraphs 8, 10, and other paragraphs of said petition, which allege, in substance, that the investigation as to Alabama rates was confined to an alleged violation of Section 3 of the Interstate Commerce Act.

VIII

Answering paragraph 11 to 13, inclusive, of said petition, these defendants admit that, following the inauguration of the investigation aforesaid and the consolidation therewith of the several separate investigations concerning intrastate rates, elaborate hearings were had before the Interstate [fol. 160] Commerce Commission, and that Commission accorded to all parties to said consolidated proceeding, including the petitioners herein, at said hearings held throughout the course of said proceeding, a full and fair opportunity to be heard upon all subject matters falling within the scope of said general investigation and other cases consolidated and heard therewith, including the matters arising in Docket No. 16336; and that, during the course of said hearings, which covered a period of six months, a large amount of testimony and documentary evidence bearing upon the matters under investigation was submitted to the Commission,

including the evidence (both oral and documentary) submitted by witnesses for the petitioners here, under the guidance of their counsel. At said hearings and subsequently, both orally and on briefs filed in said proceeding, all questions relating to said matters under consideration were fully presented, argued, and submitted to the Commission for determination on behalf of said parties, including the petitioners here, by their respective counsel. Whereupon, the Commission determined said matters and made and entered its said original report and supplemental reports and its orders accompanying the same, including said order of October 3, 1927, which is the order attacked in this proceeding, which said reports, so rendered and filed, and the accompanying orders issued and served, including said order of October 3, 1927, embodied the Commission's decision, conclusions, orders, and requirements in the premises and prescribed the rates, charges, rules, and regulations to be observed by defendants in the future with respect to the transportation of fertilizer and fertilizer materials in southern territory, including the intrastate transportation of this traffic between points in Alabama, in accordance with the mandate of said order of October 3, 1927, which is directed particularly to the rates and charges for the intrastate transportation of fertilizer and fertilizer materials between points within the state of Alabama.

Defendants aver that said order of October 3, 1927, entered in Docket No. 16336, and the findings, conclusions, and requirements reached and made by the Interstate Commerce Commission, as embodied in its reports and said order in regard to rates for application to the intrastate transportation of fertilizers and fertilizer materials between points in [fol. 161] the state of Alabama, were and are, and that each and all of them was and is, fully supported, sustained, and justified by the evidence submitted to the Commission in said proceeding as aforesaid; and these defendants specifically deny each and all of the allegations to the contrary contained in said petition.

Defendants specifically deny the matters and things alleged in paragraph 11, except that they admit that full hearings were had before the Interstate Commerce Commission and a large amount of testimony was taken in the proceedings aforesaid.

Defendants deny the matters and things alleged in paragraph No. 12, except that: (a) defendants admit the words in quotation marks quoted from the report of the Commission, but they aver that the quoted words do not constitute or reflect the full substance of the report or the findings of the Commission made therein, and they beg leave to refer to the report in its entirety for the findings in regard to intrastate, as well as interstate rates; (b) defendants admit that in making the finding quoted the Commission had under consideration the intrastate rates in Alabama, as well as in other southern states; and (c) they admit that the report of the Interstate Commerce Commission in said consolidated cases was entered July 19, 1926, and is officially reported at 113 I. C. C. 389, but these defendants deny that the excerpts quoted from said report contained in Exhibit A attached to said petition are all of the pertinent parts of said report, and they aver that it is necessary for the Court to have before it and to consider the report and supplemental reports which have heretofore been exhibited with this answer.

Defendants specifically deny the allegations of paragraph 13.

IX

Answering paragraph 14 defendants admit that, in its report in its Docket No. 16295, the Interstate Commerce Commission prescribed a uniform scale of rates for application throughout southern territory. Concerning the necessity for a uniform level of rates throughout southern [fol. 162] territory that Commission said, in its report, 113 I. C. C., at page 422:

"Carriers and shippers agree, with a single exception, that a uniform level of fertilizer rates is desirable throughout all of southern territory. The single exception is the Florida East Coast, which desires a somewhat higher level to and from points in the Florida peninsula. Considering all the circumstances surrounding this particular form of traffic and the general agreement upon this point, resulting in a paucity of evidence to the contrary, we think that the record supports one uniform level."

Defendants aver that, as stated by the Commission, the parties of record, including the petitioners, agreed with

practical unanimity that there should be one level of rates applied on fertilizer and fertilizer materials throughout the whole of southern territory, and the petitioners here did not dissent from, but, on the contrary, acquiesced in, that view. The determination of the proper level of rates and the measure of the scale to be used in fixing the rates were matters which were, of necessity, left to the judgment of the Interstate Commerce Commission under the evidence upon the record made in said consolidated proceedings and said general investigation.

Defendants aver that, as shown by the recitals in the report of the Interstate Commerce Commission, the representatives of the manufacturers and shippers, and also the Alabama Public Service Commission, one of the petitioners here, advocated for adoption the scale of rates theretofore prescribed by the Alabama Public Service Commission in its order of May 26, 1924, which was the lowest scale of rates on fertilizer and fertilizer materials in southern territory, whereas the railroads, including these defendants, advocated for adoption the scale of rates known as the Royster Scale, referred to in the report of the Interstate Commerce Commission, 113 I. C. C., 389, as having been previously prescribed for application in Carolina territory and thrice approved by it for application in that territory. After having reviewed the mass of evidence before it, and having adverted to the mandate of the Hoch-Smith Resolution in regard to a redistribution of transportation charges, the Interstate Commerce Commission said—

[fol. 163] "that upon sound economic grounds fertilizer is a commodity which should be leniently treated in distributing the burden of freight transportation."

and proceded to prescribe what, in its judgment, it considered to be a reasonably low scale of rates to be used in fixing rates on fertilizer and fertilizer materials throughout southern territory, having in view its finding that these commodities should be leniently treated in distributing the cost of freight transportation and that they were entitled to consideration under the principles predominant in the Hoch-Smith Resolution. The Interstate Commerce Commission said, in this connection, 113 I. C. C., at page 424:

"Upon the record before us no other method of determining just and reasonable rates is possible than the exercise of our best judgment in the light of all the evidence submitted. After careful consideration of this evidence, which we have summarized above, and having in mind the principles which we believe should be applied in distributing the burden of rail transportation and which are also set forth above, we have reached the conclusion that a scale somewhat different from that recommended by the examiner, but producing much the same aggregate revenue, should be adopted."

Some of the consideration inducing the Interstate Commerce Commission to prescribe a single scale of rates for application for either joint line service or single line hauls are set forth in its report, 113 I. C. C., at pages 422-424, particularly in connection with the short-route rule for determining distances, which it likewise promulgated.

The Commission then set forth the scale which it prescribed and embodied in its order accompanying its said report and directed that said uniform scale should apply to the interstate transportation in carloads of mixed fertilizers and fertilizer materials listed in Appendix B to its report, over standard lines throughout the southern territory, as described in Appendix A to its said report, subject to the minimum carload weights therein found reasonable, and in so promulgating and ordering said scale it was [fol. 164] provided, in said report, at page 424, and in the accompanying order—

"that in applying such rates to the longer hauls the respondent carriers may for the purpose of tariff simplification, subject to our approval, use groups of moderate extent and measure the rates by distances to and from fairly representative points in such groups."

It was likewise required that, in computing distances for the application of the rates prescribed the shortest routes should be used over which carload traffic could be moved without transfer of lading, all of which findings, requirements, and orders were and are binding upon the defendants, as well as upon all of the other parties to said proceeding, including the petitioners here, and cannot be drawn in question or reviewed by any other tribunal under the law

of the land, as interpreted by the Supreme Court of the United States, since said findings, requirements, and the orders embodying the same and accompanying said report are amply sustained by the evidence of record before the Interstate Commerce Commission in said consolidated proceedings.

Defendants specifically deny that the Interstate Commerce Commission was not justified, on the record before it, in prescribing one scale for uniform application for joint, as well as single line, hauls between points on standard lines, and the mere fact that the Interstate Commerce Commission, in said proceeding, ordered a scale for uniform application which scale differs from any scale advocated by shipper or carrier, and differs from the Alabama scale, in no way militates against the validity, conclusiveness and binding effect of said findings, requirement and order of the Interstate Commerce Commission promulgating and requiring the maintenance of rates upon basis of the scale so prescribed by it, that finding and order of said Commission in regard to said scale being, as these defendants aver, conclusive and binding upon all parties to said proceeding, including petitioners here.

Defendants deny that in its order of October 3, 1927, entered in Docket No. 16336, the Interstate Commerce Commission prescribed any different basis or level of rates for intrastate application in Alabama from that which it had [fol.165] theretofore prescribed for uniform application throughout southern territory, or that it forbade grouping of the shorter intrastate hauls in its said order of October 3, 1927, directed at the intrastate rates in Alabama. In said last mentioned order the railroads, according as they respectively participate in the transportation, were thereby ordered and required—

"to establish, on or before January 3, 1928, * * * and thereafter to maintain rates and charges for the transportation of fertilizers and fertilizer materials in intrastate commerce within the state of Alabama which shall be no less, for corresponding distances, than the rates contemporaneously applied by said carriers, in accordance with our order of July 19, 1926, and as subsequently amended, to the transportation by said carriers of fertilizers and fertilizer materials between points in the state of Alabama and points in other states."

And defendants aver that the rates by them published, to become effective in intrastate traffic between points in the state of Alabama, in obedience to the requirements of said orders, are based upon the same scale and reflect the same groupings and the same method of ascertaining distances as prevail and were used in publishing the interstate rates in obedience to said orders of the Interstate Commerce Commission.

Defendants specifically deny the allegations of paragraph 14 to the effect that, while the interstate scale permits grouping for the "longer hauls," that the intrastate rates as fixed by the Interstate Commerce Commission do not permit such grouping. They deny the allegation that under the order of the Interstate Commerce Commission there is no authority for a limited grouping of the shorter intrastate hauls. On the contrary, these defendants aver that such limited grouping for interstate hauls is permitted to the extent indicated in the said decisions and orders, and particularly in the original report as modified and supplemented in this point by the second supplemental report of the Interstate Commerce Commission and the accompanying orders, dated July 5, 1927, and such limited grouping was likewise observed in the revision of intrastate [fol. 166] rates between points in Alabama published in obedience to the order of October 3, 1927, entered in Docket No. 16336.

Defendants admit that the Interstate Commerce Commission, in its findings, fixed less-than-carload rates at 130 per cent of the carload rates.

X

Answering paragraph 15, defendants admit that the quotation made from page 435 of the report of the Interstate Commerce Commission in its Docket No. 16295 is correct, as far as it goes, but defendants deny that the finding quoted constitutes the sole finding with respect to intrastate rates in Alabama. And defendants likewise deny the other allegations of said paragraph 15, in manner and form as alleged.

XI

Answering paragraph 16, defendants admit that the order for a general investigation of fertilizer rates, inaugurating the proceeding in Docket No. 16295, did not include

import rates within its scope, and that the Commission so found and held in its report in said docket, as by reference to said report, 113 I. C. C., at page 428, will more fully appear. Defendants deny, however, the other matters and things alleged in said paragraph numbered 16, and specifically deny the allegation that the "inbound rates frequently and generally in combination with the outbound rates showed an equality among manufacturers, whether shipping interstate or intrastate, of total freight charges."

XII

Answering paragraph 17, defendants aver that the extent to which any equalization of rates into the South from the Ohio River crossings was permitted in the report of the Interstate Commerce Commission in Docket No. 16295 is not correctly stated or recited in said paragraph. The extent to which any equalization or relative adjustment from the Ohio River crossings and gateways was permitted is clearly stated in said report of the Interstate Commerce Commission, 113 I. C. C., at pages 427-428, and that equalization is merely for the purpose, and to the extent there [fol. 167] indicated, of keeping open the Cincinnati gateway in competition with the other Ohio River gateways and river crossings to points in what is known as Montgomery sub-territory and of maintaining the equalization of Ohio River crossings and cities to points in Atlanta territory, Louisville being the pivotal point, and the rates therefrom are required to be established in accordance with the distance scale prescribed.

Concerning the relative adjustment from the Ohio River crossings and gateways, the Commission said, 113 I. C. C., at page 428:

"To the extent that this adjustment may be accomplished without deviation from our findings as to reasonable maximum rates, and under the fourth-section relief hereinafter accorded, there seems, with the exception noted, to be no sufficient reason for disapproval."

The Commission, however, said in its report, at page 428:

"It is understood that the rates under this proposed adjustment from the Ohio River crossings would apply largely on fertilizer materials such as tankage, dried blood

and cyanamid, originating beyond the crossings, and that little or no mixed fertilizer tonnage would be handled thereunder."

In as much as said relative adjustment of the Ohio River cities was and is a gateway adjustment, used principally in the handling of through traffic from points beyond, and primarily for the purposes of keeping open the several competing routes operating through the different River gateways, there was no objection urged at the hearing, on the part of any interest or on the part of petitioners here, to the maintenance of the Ohio River relative adjustment.

Aside from that relative adjustment, the extent to which the carriers were authorized to use small groupings and to fix rates to and from representative points in such groups of moderate extent, has been adverted to in answering paragraph 14 of said petition and is shown in the report and accompanying orders in said Docket No. 16295.

[fol. 168] Defendants admit, subject to verification, that Exhibit B attached to said petition is a copy of the order issued under date of July 5, 1927, by the Interstate Commerce Commission in its Docket No. 16295, and includes the fourth supplemental Fourth Section Order No. 9346, which relates to and grants fourth-section relief to the circuitous lines or routes to meet the rates of more direct routes, in the following words and figures, to-wit:

"It is further ordered that should the carriers parties to the above-entitled proceeding, in maintaining the rates herein prescribed, established groups of destination or origin points, and the circuitous lines or routes shall meet the rates of more direct routes from or to points in said groups, they may maintain higher rates from and to intermediate points even though such rates shall exceed the rates prescribed for the distances involved, provided, however, that in no case shall the rates at such intermediate points exceed the rates prescribed by more than 15 cents per ton on and after September 20, 1927."

The foregoing mandate, quoted from this order, restricts any departure from the scale in connection with

fourth-section relief granted where group adjustments are involved, so that such departure shall not exceed 15 cents per ton over or under the rate which would be applicable were the scale applied strictly point to point and no group adjustments were permitted. Concerning this departure from the strict point to point application of the scale prescribed, the Commission said, in its second supplemental report of July 5, 1927, 129, I. C. C., at page 215, after referring to what it had previously said in its original report, 113 I. C. C., page 424, on this same subject, that—

"It appears that in the maintenance of groups under the foregoing authority, the rates between various points will be somewhat higher than they would be if the scale were strictly applied on a point-to-point basis. Such departures from the scale were forbidden in fourth-section order No. 9346, issued in connection with our original report, and the carriers now ask that that order may be amended so that it will not interfere with the grouping [fol. 169] plan. No objection to such an amendment has come to our attention, and in order that reasonable groupings may be maintained some leeway in this respect seems to be necessary."

Thereupon the Commission issued its fourth supplemental Fourth Section order, the mandate from which has been quoted above, and that requirement restricted any departure from the scale so as to be within extremely narrow limits.

The allegation in paragraph 17 of said petition in regard to constructive mileage of 50 miles for a car-float of twenty miles in the Tennessee River in Alabama relates to the service of the Nashville, Chattanooga & St. Louis Railway, as to which it is assumed that defendant will answer.

XIII

Answering paragraph 18 of the petition, defendants say that while it is true that prior to the publication of the rates prescribed by the Interstate Commerce Commission in its Docket No. 16295, the carload minimum on mixed fertilizers in connection with the interstate adjustment was, generally, 15 tons, nevertheless the findings made in

the report show that the average loading of mixed fertilizers in the South was in excess of twenty tons. It is apparent, therefore, that under the former interstate adjustment, although the carload minimum was 15 tons the freight charges collected under the interstate rates were, on the average, based on a weight in excess of 20 tons.

Defendants aver, however, that the scale prescribed by the Interstate Commerce Commission for application throughout southern territory, and the interstate rates which have been published in obedience to the mandate of the order of the Interstate Commerce Commission in its Docket No. 16295, are on basis of a carload minimum weight of 20 tons, that being the carload minimum weight for mixed fertilizers fixed and prescribed by the Interstate Commerce Commission after it had reviewed the evidence and considered the suggestions of all parties in interest, the subject of carload minimum weight being discussed in its original [fol. 170] report, 113 I. C. C., at page 400, the Commission saying, at page 410:

"It would seem that the time has come when an increase in the carload minimum on fertilizer may properly be made. The record contains no pronounced objection to the higher minimum, and the attitude of the shippers is, in general, favorable."

It, thereupon, ordered a 20-ton carload minimum weight in connection with the scale which it prescribed for application throughout southern territory, and that carload minimum is in effect as a part of the interstate adjustment, in obedience to the mandate of the order of the Interstate Commerce Commission and is required to be observed in its order of October 3, 1927, in connection with intrastate shipments in Alabama.

XIV

Answering paragraph 19 of the petition, defendants admit that they and other standard railroads filed with the Alabama Public Service Commission petitions for authority to make effective, for intrastate transportation between points in Alabama, the same rates on fertilizer and fertilizer materials as had been prescribed by the Interstate Commerce Commission for interstate application

in its Docket No. 16295. Said applications were so filed by the defendants with the Alabama Public Service Commission in order to bring the intrastate rates on this traffic in Alabama into harmony with, and make them conform to, the interstate adjustment as prescribed and fixed by the Interstate Commerce Commission. The said Interstate Commerce Commission, in its report in Docket No. 16295, 113 I. C. C., at pages 431-432, said concerning the contention then made by the Alabama Public Service Commission, which is the same as the contention here advanced by petitioners, that:

"The Alabama commission contends that the law does not require that intrastate rates shall be maintained on the exact level of interstate rates, citing Ohio State Rates on Sand, Gravel, Stone, and Paving Blocks, 85 I. C. C., 66, and that before an intrastate rate may be condemned it [fol. 171] must be found to work undue prejudice against persons or localities in interstate or foreign commerce or unjust discrimination against interstate or foreign commerce as a whole, citing Wisconsin R. R. Commission v. C. B. & Q. R. R. Co., 257 U. S. 563. It urges that the carriers have not proved their case, and points to the fact that the carload minimum in connection with the Alabama rates is 5 tons higher than under the interstate rates, and that its scale averages as high as the so-called normal scales of three of the largest trunk lines operating in that State, namely, the Illinois Central, the Louisville & Nashville, and the Mobile & Ohio. This latter statement is true so far as the average is concerned, but specific consideration of the present interstate rates is unnecessary, for they wil be changed under our findings herein. As shown by the above table, the new rates will be substantially higher for equal distances than the Alabama intrastate rates, and they will be subject to the same carload minimum.

"While exact harmony between intrastate and interstate rates may not in all cases be required by the law, nevertheless when there is such a preponderance of intrastate traffic as here obtains, the conclusion is inevitable that the application of rates thereon substantially lower than the interstate rates contemporaneously applied under similar conditions must bring about, in some degree at

least, the unjust discrimination against interstate commerce, as well as the undue prejudice to persons or localities in interstate commerce which are declared by the act to be unlawful."

And on page 435 of its report, the Interstate Commerce Commission made the following finding:

"With respect to these intrastate cases we find:

1. That the maintenance of intrastate rates in Alabama on a lower basis than the corresponding rates herein found reasonable for the interstate transportation of fertilizer and fertilizer materials will for the future result in unjust discrimination against interstate commerce and in undue prejudice to persons and localities in interstate commerce."

. . . . . .

[fol. 172] "No orders will be entered in these State cases, Nos. 16335, 16336, and 16484, at this time. It is believed that the respective State commissions will cooperate in authorizing such revisions as may be necessary to bring their rates into harmony with the interstate adjustment."

The Interstate Commerce Commission had made a thorough investigation in said proceeding not only in regard to the interstate rates, but also concerning the intrastate rates in Alabama, in South Carolina, and in Georgia, which intrastate rates were involved in Dockets Nos. 16335, 16336, and 16484. Having made findings requiring the same level intrastate as interstate, and having fixed the interstate level and scale to govern the interstate rates on the assumption and with the avowed expectation that intrastate rates throughout the South, including the intrastates rates in Alabama, would be brought into conformity with the interstate rates so prescribed, as shown in its said reports in Docket 16295 and consolidated cases heard therewith, the Interstate Commerce Commission did not at once proceed to enter an order such as it later entered, directing and requiring the railroads to place the Alabama intrastate rates on the interstate level. Having prescribed the rates to govern throughout southern territory and

fixed the scale to be used as a yardstick, in a spirit of comity and in an effort to cooperate, the Federal Commission afforded the State Commissions an opportunity to bring the intrastate rates in the respective states into harmony with the interstate adjustment, and stated, in the language above quoted, that no order would be entered in the three state cases, Nos. 16335, 16336, and 16484, at that time because it believed "that the respective State commissions will cooperate in authorizing such revisions as may be necessary to bring their rates into harmony with the interstate adjustment."

Notwithstanding the fact that the Alabama Public Service Commission, one of the petitioners here, had appeared and participated in the proceedings before the Interstate Commerce Commission in Docket No. 16295 and in Docket 16336, heard in connection therewith, had submitted all of the evidence it desired to submit and had been offered full opportunity to to be heard on all the points or issues it desired to raise, and had been further heard on brief and [fol. 173] in oral argument, nevertheless when afforded an opportunity to bring its rates into harmony with the rates fixed and prescribed by the Interstate Commerce Commission in said proceedings, said Alabama Public Service Commission, petitioner here, declined to do so, although stating, in its report, after referring to the decision and orders of the Interstate Commerce Commission, that—

"The revised interstate rates have been published by the carriers, and they ask us to sanction the publication of identically the same rates on Alabama intrastate traffic in lieu of the existing rates."

It, thereupon, denied the petition of the carriers, and in its report accompanying its order stated that it adhered to the scale which it had promulgated on May 26, 1924, although that scale had been before the Interstate Commerce Commission in said general investigation and in said Docket No. 16336, and notwithstanding the fact that the Federal Commission had found that the rates produced by said intrastate scale were unduly low and, if applied and continued in effect in Alabama, as contrasted with the interstate rates which the Interstate Commerce

Commission had prescribed and promulgated in said Docket 16295 and consolidated cases heard therewith, would produce and cause the undue and unreasonable advantage, preference and prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate or foreign commerce on the other hand, and the undue, unreasonable and unjust discrimination against interstate or foreign commerce which was forbidden and declared to be unlawful by the Interstate Commerce Act, as amended, and notwithstanding the further fact that the Interstate Commerce Commission, through its said orders, had prescribed the level of rates thereafter to be observed intrastate in Alabama to remove such advantage, preference, prejudice and discrimination, and had fixed the general level of rates to be observed on fertilizer and fertilizer materials throughout southern territory. Thereby, and as a result of its refusal to follow, observe, respect, or recognize the findings of the Interstate Commerce Commission and the level of rates fixed and prescribed by it, the Alabama Public Service Commission undertook to [fol. 174] compel the railroads operating in Alabama to continue in effect the unduly low and discriminatory rates which that tribunal had theretofore prescribed but which had been rejected, after investigation, by the Interstate Commerce Commission in said general investigation and had therein been found to be unduly low and as causing revenue losses to such an extent that, if applied on this traffic throughout southern tefritory, the revenues of the carriers would be reduced in excess of $1,000,000 per annum.

XV

Answering paragraph 20, these defendants admit that they and other defendants, on or about September 1, 1927, brought to the attention of the Interstate Commerce Commission, through a petition duly filed, the fact that the Alabama Public Service Commission, by its report and order of July 18, 1927, had denied the carriers' petition to make effective intrastate in Alabama the same rates as had been prescribed by the Interstate Commerce Commission in the proceedings aforesaid, and published and made effective on fertilizer and fertilizer materials moving

between points on standard lines throughout southern territory in obedience to the mandate of the orders of the Interstate Commerce Commission, notwithstanding the explicit findings contained in the report accompanying the order of the Interstate Commerce Commission that the same level of rates should apply intrastate in Alabama as had been ordered for interstate application.

Defendants deny that any further hearing was necessary, on said petition or prior to the issuance by the Interstate Commerce Commission of its order of October 3, 1927, in as much as the most elaborate hearings had already taken place in said general investigation of fertilizer rates and in said proceeding heard therewith, known as Docket No. 16336, in which proceedings petitioners here had participated throughout and had therein urged the adoption of the scale promulgated by said Alabama Public Service Commission and later adhered to by it. The Interstate Commerce Commission, after having considered all of the evidence offered by the petitioners here in said proceeding, as well as the evidence offered by the manufacturers and shippers in support of the shippers' proposed scale, which, [fol. 175] as stated, was substantially the same as the Alabama intrastate scale—the lowest scale of fertilizer rates in the South—overruled the contention of said petitioners here, as well as that of the shippers and manufacturers, concerning the scale to be adopted, and after carefully reviewing all of the facts developed by the evidence, including the revenue test ordered by the Interstate Commerce Commission and made by the carriers, prescribed the scale of rates thereafter to be used to fix the measure of rates on fertilizer and fertilizer materials moving between points on standard lines in southern territory. Having so fixed the interstate rates, and having made findings which condemned the Alabama intrastate rates, as well as the other findings set forth in its report in regard to those rates, and having overruled the contentions of the Alabama Public Service Commission, which are essentially the same as now urged by the petitioners here, it was only necessary for the Interstate Commerce Commission to make its said order of October 3, 1927, which, in turn, merely carried into effect the findings which it had theretofore made in its said report with respect to the Alabama intrastate rates.

Defendants, therefore, specifically deny that said order of October 3, 1927, was entered by the Interstate Commerce Commission without a hearing. The entering of said order concurrently with the filing of its report of July 19, 1926, in Docket No. 16295 and consolidated cases was merely deferred, under the circumstances therein stated, because, as stated in 113 I. C. C., at page 435:

"It is believed that the respective State commissions will cooperate in authorizing such revisions as may be necessary to bring their rates into harmony with the interstate adjustment."

XVI

Respondents specifically deny the allegations of paragraph 21 of said petition to the effect that said conclusions and findings of the Interstate Commerce Commission were indefinite or that the Interstate Commerce Commission did not find the extent to which it was necessary to change the intrastate rates in Alabama to remove the unjust discrimination found against interstate commerce. On the con-
[fol. 176] trary, that Commission specifically found and held, inter alia (113 I. C. C., page 435):

"that the maintenance of intrastate rates in Alabama on a lower basis than the corresponding rates herein found reasonable for the interstate transportation of fertilizers and fertilizer materials will, for the future, result in unjust discrimination against interstate commerce and in undue prejudice to persons and localities in interstate commerce,"

and in the language quoted in the last succeeding paragraph it plainly stated that to remove the discrimination found it was necessary that the intrastate rates in Alabama be placed upon the level which it had prescribed for the interstate rates, and withheld any order so requiring to afford the respective state commissions an opportunity to realign their rates accordingly.

In said proceeding the carriers and shippers, including the petitioners here, recognized, as stated by the Interstate Commerce Commission in its original report, 113 I. C. C., page 422, that a uniform level of fertilizer rates is desirable and should be established throughout southern territory.

Defendants deny that the evidence before the Interstate Commerce Commission did not justify the findings which it

made in its said original report as to the Alabama intrastate rates. On the contrary, they aver that its findings, embodied in its said report and carried out in its said order of October 3, 1927, with respect to the Alabama intrastate rates, were and are, and that each of them was and is, fully supported by the evidence submitted to the Commission in said proceeding as aforesaid; and these defendants deny each and every allegation to the contrary contained in said paragraph numbered 21 or elsewhere in said petition.

Defendants say that the findings of the Interstate Commerce Commission with respect to said Alabama intrastate rates and the scale to be used to remove the unjust and unlawful discrimination found to exist, are set forth in its said report and orders aforesaid, and they deny that said findings, or the requirements of the orders made by said Interstate Commerce Commission in regard to the intrastate rates in Alabama in any way transcend its powers, [fol. 177] or that said requirements, findings, or orders should have been limited to certain intrastate rates in Alabama. They aver that this very contention was advanced by the said Alabama Public Service Commission in said proceeding, was fully considered by the Interstate Commerce Commission and overruled by it. After reciting, in its original report, at pages 431 and 432, the contention of the Alabama Commission, the Interstate Commerce Commission said:

"While exact harmony between intrastate and interstate rates may not in all cases be required by the law, nevertheless when there is such a preponderance of intrastate traffic as here obtains, the conclusion is inevitable that the application of rates thereon substantially lower than the interstate rates contemporaneously applied under similar conditions must bring about, in some degree at least, the unjust discrimination against interstate commerce as well as the undue prejudice to persons or localities in interstate commerce which are declared by the act to be unlawful."

It then proceeded to make the specific findings already pointed out and the requirement that the undue prejudice and unjust discrimination found to exist should be removed by applying intrastate rates not lower than those prescribed by it for interstate application.

Defendants deny that they continue voluntarily to maintain intrastate rates within the State of Mississippi lower

than the said intrastate rates in effect in Alabama, or lower than the interstate rates prescribed, as aforesaid, by the Interstate Commerce Commission. They aver that following the receipt of the decision and order of the Interstate Commerce Commission in said Docket No. 16295, the principal railroads operating in Mississippi filed an application with the Railroad Commission of Mississippi to make effective intrastate in that state the same level of rates on fertilizer and fertilizer materials as had been prescribed by the Interstate Commerce Commission in said Docket No. 16295, which petition was set for hearing in November, 1927, and the hearing of which petition and action thereon has been urged by these defendants; but the hearing of said petition was postponed by the Railroad Commission of Mis- [fol. 178] sissippi upon the representation, as made to these and other defendants, that the personnel of the Commission would change with the first of the year 1928 and it was the desire of the retiring Commissioners that said petition should be heard and decided by the incoming Commission. Defendant, Southern Railway Company, has a very limited mileage within the State of Mississippi. Defendant, Alabama Great Southern Railroad Company, has practically no mileage within Mississippi, nor has defendant, Northern Alabama Railway Company, any mileage within that State, but defendants are advised, and on information and belief aver, that preparation has been made by the principal railroads operating in the State of Mississippi for said hearing in support of said application, and that said application will be set for hearing during the month of February, 1928.

Defendants aver and plead, however, that the mandate of the order of the Interstate Commerce Commission in regard to Alabama intrastate rates cannot be avoided, nor can said order, nor the action taken in regard to intrastate rates in Alabama, be challenged or attacked by reason of the present status of the intrastate rates in Mississippi, and that said last mentioned matter is immaterial and irrelevant.

XVII.

Defendants deny the allegations of paragraph 22 of said petition to the effect that said order of October 3, 1927, was made without opportunity to the Alabama Public Service Commission to be heard, and without definite findings

by the Interstate Commerce Commission. On the contrary, they aver that the report of the Interstate Commerce Commission, and the record before it, show that the fullest opportunity was accorded to the Alabama Public Service Commission to be heard; that it was so heard, and presented not only evidence in oral and documentary form, but in brief and on oral argument, and after elaborate hearings specific and definite findings were made by the Interstate Commerce Commission in regard to said Alabama intrastate rates, which findings are fully set forth in its original report in Docket No. 16295.

[fol. 179] Defendants admit that Exhibit C, accompanying said petition, is a copy of the order of the Interstate Commerce Commission entered on October 3, 1927, in Docket No. 16336, consolidated and heard with said general investigation.

XVIII

The allegations of paragraph 23 of said petition relate to certain short line railroads operating in the State of Alabama, and the allegations thereof do not concern directly these defendants. Defendant believe, however, that certain named short line railroads in the State of Alabama did file a petition with the Interstate Commerce Commission seeking relief from the intrastate rates in Alabama and asking to be included in the terms of the order of October 3, 1927.

XIX

Answering paragraph 24, these defendants admit that the standard lines in Alabama, including these defendants, have printed and filed tariffs which were originally to become effective on January 3, 1928, to comply with the findings, requirement, report and order of the Interstate Commerce Commission, whereby and whereunder the intrastate rates on fertilizer and fertilizer materials within the State of Alabama would be placed on the same basis and the same level as, and which corresponded in all respects with, the rates published for interstate application effective July 1, 1927, in compliance with the reports and orders of the Interstate Commerce Commission in the General Investigation of Fertilizer Rates, Docket No. 16295. Defendants, however, aver that after the filing of the petition in this cause, and in order to afford an opportunity for

the petitioners' application for a temporary restraining order and for an interlocutory injunction to be heard as required by law, the Interstate Commerce Commission extended the effective date of its said order of October 3, 1927, entered in Docket 16336, so that the effective date thereof would become February 3, 1928, in lieu of January 3, 1928, and concurrently the defendant carriers extended, [fol. 180] by supplement duly filed, the effective date of the applicable tariffs to February 3, 1928.

Answering the last sentence of paragraph 24, while it is true that Note 5 in the tariff, which originally published the interstate rates to conform to the order of the Interstate Commerce Commission in Docket 16295, made those interstate rates so prescribed and published inapplicable on intrastate traffic in Florida, Mississippi, North Carolina, South Carolina, and Virginia, it is nevertheless true, and respondents aver the fact to be, that the North Carolina Corporation Commission has authorized, for application intrastate in North Carolina, the same rates on fertilizer and fertilizer materials as were prescribed in Docket 16295; that the South Carolina Commission has likewise prescribed the same rates, with the exception of requiring a carload minimum of 30,000 pounds in lieu of 40,000 pounds; while in the State of Virginia the same rates have been prescribed for intrastate application within that state as were ordered by the Interstate Commerce Commission in Docket 16295, except for very short hauls and except that the rates on certain fertilizer materials were made 75 per cent of the rates so prescribed by the Interstate Commerce Commission.

Defendants, however, aver that 13th section petitions have been filed with the Interstate Commerce Commission in the matter of the South Carolina intrastate minimum weights, asking that the minimum be made the same as that prescribed for interstate application, and this petition has been set for hearing by the Interstate Commerce Commission; likewise, the railroads operating in the State of Virginia have filed with the Interstate Commerce Commission a 13th section petition asking that the departures made by the State Corporation Commission of Virginia from the interstate standard as prescribed and fixed by the Interstate Commerce Commission in Docket 16295 be eliminated, and that the Virginia intrastate rates on fertilizer

and fertilizer materials be made to conform in all respects to the interstate rates so prescribed and fixed by the Interstate Commerce Commission. Defendants are not advised, and have no definite information as to what steps have been taken in regard to the intrastate rates in Florida, as none [fol. 181] of these defendants operates in the State of Florida. They are advised, and upon information and belief aver, that a petition has been filed with the Louisiana Commission in regard to the territory in Louisiana east of the Mississippi River, asking that the rates in that territory on fertilizer and fertilizer materials be brought into conformity with the interstate rates as prescribed by the Interstate Commerce Commission, but none of these defendants operates any mileage within the State of Louisiana.

Defendants, however, aver that the interstate rates as prescribed by the Interstate Commerce Commission have been made effective for intrastate application in the States of Kentucky, Tennessee, North Carolina, and Georgia, and that, with the exceptions noted in the States of Virginia and South Carolina, the intrastate rates in all of the Southern States are now upon the same level as the interstate rates prescribed by the Interstate Commerce Commission in its Docket No. 16295 for application throughout southern territory, with the exception of the States of Alabama and Mississippi, and with the further exception of a small part of the State of Louisiana which lies east of the Mississippi River. As stated, defendants are not definitely advised as to what is the existing situation in the State of Florida.

XX

Respondents specifically deny each and all of the matters and things alleged in paragraph 25 of said petition, and each and every part of the same in manner and form as alleged.

XXI

Defendants deny the allegations of paragraph 26 of the petition, and each and every part of the same, in manner and form as alleged.

XXII

Defendants specifically deny the allegations of paragraph 27 of said petition to the effect that said Interstate Com-

merce Commission, in its opinions, findings, and in its orders and judgment, acted arbitrarily or contrary to law, or contrary to the evidence, or that it made findings or [fol. 182] reached conclusions or entered orders without any evidence to support the same. Defendants specifically deny that said opinion, findings, conclusions, and the judgments and orders made by said Interstate Commerce Commission are invalid or arbitrary or exceed its power and authority in any respect or to any extent by reason of any of the said ground alleged and set forth in said paragraph numbered 27.

Defendants believe and aver that in making its said reports, findings and orders, including its said order of October 3, 1927, that the Interstate Commerce Commission considered and weighed carefully, in the light of its own knowledge and experience, every fact, circumstance and condition called to its attention on behalf of the parties to said consolidated proceeding, by their respective counsel, including all matters covered by the allegations of the petition here.

Defendants, answering further, deny that said order of October 3, 1927, attacked in said petition, was made and entered either arbitrarily or unjustly, or contrary to the relevant evidence, or without evidence to support it. They aver that in making its said order the Commission did so only after the most thorough investigation, after affording the petitioners and all other parties the fullest and most ample opportunity to be heard, and after considering and weighing not only the evidence produced by the several parties to said proceeding, including petitioners, but the very contentions which are now advanced by petitioners in their said petition here. They further aver that the matters and things of which complaint is made in the petition here were fully considered by the Interstate Commerce Commission and are foreclosed by its finding, conclusion, report, and orders based on substantial evidence, and that said petition here presented is but a repetition, to a very large extent, of the contentions made by the petitioners in said consolidated proceedings before the Interstate Commerce Commission and an effort to retry, reopen and have reconsidered the findings, report and orders of the Interstate Commerce Commission in the premises.

Defendants specifically deny the allegations of subparagraph (a) of paragraph 27 of said petition in so far as it

[fol. 183] is there alleged that the Interstate Commerce Commission made a finding that only Section 3 of the Interstate Commerce Act was violated or that its findings and order with regard to the Alabama intrastate rates were broader than the record justified, or that said findings and the scope of its said order in regard to Alabama intrastate rates should have been limited or circumscribed in any such respect or to any such extent as that contended for in said sub-paragraphs (a) and (b) of said paragraph 27 of said petition.

Defendants deny the allegations of sub-paragraph (c). They deny the allegations of sub-paragraph (d), except the correctness of the excerpt quoted therein from the opinion of the Interstate Commerce Commission.

They deny the allegations of sub-paragraph (e), and specifically do they deny that the finding and judgment of the Interstate Commerce Commission in regard to the intrastate rates in Alabama was limited to a finding of a violation of Section 3, or that the only issue arising in the pleadings and the evidence was the issue between the rates existing prior to July 19, 1926, and the then current rates intrastate in Alabama. They deny that petitioners, or any of the parties to said proceeding before the Interstate Commerce Commission, have been denied the right to a full hearing, or that the due process clause of the Constitution has been violated, or that petitioners or any shippers or other interested parties have been denied a full hearing in said proceeding, in violation of any of the Acts of Congress or of any Constitutional rights.

They deny that the action taken, and the report and findings made and entered by the Interstate Commerce Commission, were made without pleadings or proof of any burden on interstate commerce, or that the said Commission acted in any way in violation of any Constitutional provision or of any provision of the Interstate Commerce Act; on the contrary, these defendants aver that the action taken and reports and orders made by the Interstate Commerce Commission in the proceeding before it, and particularly its said order of October 3, 1927, were well within its power and authority to make and enter under the provisions of the Interstate Commerce Act, and that said reports, find-[fol. 184] ings and order were made after full hearing and

after due notice to all of the parties, including the petitioners here, and that said petitioners, who were parties to said proceeding and were heard at length therein upon the matters and things then presented, are now foreclosed and bound by the findings of fact based on substantial evidence so made by the Interstate Commerce Commission and the orders entered in pursuance thereof.

Answering sub-paragraph (g), defendants deny that the Interstate Commerce Commission has fixed or prescribed for intrastate application in Alabama, rates which are different from those prescribed for interstate application, or that the rates published by these defendants and other railroad companies operating in Alabama, in obedience to the orders of the Interstate Commerce Commisison in said proceedings, are upon a different basis or level from those published for interstate application.

They deny that anything contained in sub-paragraph (h) in any way militates against the validity of the order of said Interstate Commerce Commission, or that the extent to which that Commission authorized the maintenance of the Ohio River relative adjustment conflicts in any way with the order of said Commission, or in any way could be held to invalidate its order of October 7, 1927, in regard to Alabama intrastate rates, or that any radical departures have been permitted or authorized from the mileage scale in publishing the interstate rates from Ohio River crossings to points in Alabama, Georgia, or Mississippi.

Defendants deny that the order heren attacked requires any different basis or method for revising Alabama intrastate rates than that prescribed for interstate rates throughout southern territory, or that the limited grouping permitted in connection with the publication of the interstate rates is forbidden in connection with the publicaton of intrastate rates.

They deny that anything contained in sub-paragraphs (i) or (j) constitute any ground whatever for assailing the report, findings, or orders of the Interstate Commerce Commission, or that that tribunal could be compelled, in passing upon interstate and intrastate rates on fertilizer and fertilizer materials applicable to domestic shipments, to take into consideration import rates on these commodities,

[fol. 185] or that the Interstate Commerce Commission was without power to order removed the violations of the Interstate Commerce Act which it found to exist in the domestic rates applicable between points in Alabama, as contrasted with the interstate rates which would be available, under its decision, to shippers of fertilizers from interstate points into Alabama, without passing upon and readjusting contemporaneously all of the import rates through any of the southern ports on fertilizer materials. Defendants aver that the determination as to the weight of the evidence in regard to discrimination and the extent of the discrimination, constituting, in the opinion and judgment of the Interstate Commerce Commission, violations of the Interstate Commerce Act, are matters which will not be reviewed and which are not subject to review where there is evidence to sustain the findings of the Interstate Commerce Commission, as there was in the record before it in these consolidated cases.

Defendants deny the allegations of sub-paragraphs (k) and (l), and they specifically deny that Section 3 of the Interstate Commerce Act was the only section pleaded as having been violated by the lower intrastate rates in effect in Alabama.

Defendants aver that said petitioners have either purposely overlooked or have disregarded the scope of the proceedings instituted by the Interstate Commerce Commission in its Docket No. 16295, and the evidence taken and submitted in said proceeding. They ignore the notice issued by the Interstate Commerce Commission, following the institution of said investigation, as to its scope and purpose, a copy of which notice is exhibited with this answer as Exhibit No. 7. They likewise ignore the fact, stated in the original report, that there were varying levels of interstate rates in southern territory concerning which numerous complaints had arisen, as well as varying levels of intrastate rates, which had likewise been productive of numerous complaints, and that it was conceded and admitted of record in said proceeding before the Interstate Commerce Commission, by all parties in interest, including petitioners, that one rate level on fertilizer and fertilizer materials should be established to prevail throughout southern territory. That rate level has now been pre-
[fol. 186] scribed and fixed by the Interstate Commerce

Commission, acting within the scope of its power and jurisdiction, and on a record which amply sustains its action. The mere fact that petitioners, who were litigants and parties to said proceeding, advocated for general adoption the lowest level of rates in effect in southern territory on fertilizer and fertilizer materials, to-wit, the Alabama intrastate rates, and that they were overruled by the Interstate Commerce Commission in this regard when that Commission found and held, as it did, that the evidence justified a higher and different level of rates for general application throughout southern territory, including the State of Alabama, can certainly constitute no possible ground or excuse for attacking or calling into question the findings and order of the Interstate Commerce Commission promulgating and fixing the rates to be observed for the future throughout southern territory. That finding and order are conclusive and binding and cannot be questioned in this or any other tribunal. The position taken by petitioners ignores the fact that the issue as to the level of rates which should prevail throughout southern territory was submitted to, and tired out before, the Interstate Commerce Commission in said consolidated cases; that the tonnage used in making the revenue test required to be made by said Commission and made in said proceeding, included that handled in interstate, as well as in intrastate, commerce in southern territory and that the general level of interstate rates so prescribed was prescribed with the expectation that the intrastate rates would be made to conform therewith, as shown by the findings, conclusions and statements contained in the Commission's original report in Docket No. 16295.

Except as hereinbefore expressly admitted, these defendants deny the truth of each and all of the allegations contained in said petition, in so far as those allegations conflict either with the averments herein or with the statements or conclusions of fact set forth in said reports of the Interstate Commerce Commission and the accompanying orders, copies whereof have been exhibited with and are asked to be read with and considered as a part of this answer.

[fol. 187] Wherefore, having fully answered, defendants pray that the petition be dismissed at the cost of petition-

ers, and for such other and further order as may be appropriate or necessary in the premises.

Southern Railway Company, Alabama Great Southern Railroad Company, Mobile & Ohio Railroad Company, Northern Alabama Railway Company, by R. E. Steiner, S. P. Smith, Charles J. Rixey, Their Solicitors.

Duly sworn to by E. R. Gardner. Jurat omitted in printing.

(Exhibits Numbers 1, 2 and 3 the same as Exhibits 1, 2 and 3 attached to Answer of the United States.)

CERTIFICATE OF SECRETARY OF INTERSTATE COMMERCE COMMISSION—Filed January 20th, 1928

Interstate Commerce Commission, Washington

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached is a true copy of petition filed August 6, 1924, by the Atlantic Coast Line Railroad Company, et al., the original of which is now on file and of record in the office of this Commission, in Case No. 16336. In the Matter of Rates on Fertilizers and Fertilizer Materials, and Articles Taking the Same Rates, Intrastate Within the State of Alabama.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 14th day of January, A. D. 1928.

George B. McGinty, Secretary of the Interstate Commerce Commission. (Seal.)

[fol. 188] EXHIBIT No. 4 TO ANSWER OF ALABAMA GREAT SOUTHERN RAILROAD COMPANY ET ALS.—Filed January 20th, 1928

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 16336

In the Matter of Rates on Fertilizers and Fertilizer Materials, and Articles Taking the Same Rates, Intrastate within the State of Alabama

Petition

R. V. Fletcher, W. A. Northcutt, Charles J. Rixey, Frank W. Gwathmey, Henry Thurtell, M. G. Roberts, W. N. McGehee, Attorneys for Petitioners.

Washington, D. C., July 30, 1924.

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. —

In the Matter of Rates on Fertilizers and Fertilizer Materials, and Articles Taking the Same Rates, Intrastate within the State of Alabama

Petition

To the Interstate Commerce Commission:

Your petitioners, Atlantic Coast Line Railroad Company, Seaboard Air Line Railway Company, Southern Railway Company, Alabama Great Southern Railroad Company, Atlantic, Birmingham & Atlantic Railway Company, (B. L. Bugg, Receiver), Central of Georgia Railway Company, Louisville & Nashville Railroad Company, Mobile & Ohio Railroad Company, The Nashville, Chattanooga & St. Louis Railway, Northern Alabama Railway Company, St. Louis-San Francisco Railway Company, Illinois Central Railroad Company, and The Western Railway of Alabama, hereinafter called petitioners, present this petition and respectfully represent and show unto the Commission as follows:

[fol. 189]

First

Petitioners are corporations organized and existing under the laws and the respective states in which they were incorporated. Each of your petitioners has been, for many years past, and is now, engaged in operating lines of railroad within the State of Alabama, and has been and is now engaged in the business of transporting passengers and freight intrastate between points in the State of Alabama, and is likewise engaged, and has, for years past, been engaged in transporting passengers and freight moving in interstate commerce between points in the State of Alabama and points in other states. Each of your petitioners is a common carrier of passengers and freight by railroad, subject to the provisions of the Acts of Congress known as the Interstate Commerce Act and the Transportation Act of 1920, and is a party to and participates in through interstate freight routes and through interstate freight rates—including rates on fertilizers and fertilizer materials, and articles taking the same rates, in carloads—and tariffs applicable between points in the State of Alabama and points in other states.

Second

Petitioners further show that by Section 422 of the Transportation Act, 1920, this Honorable Commission is required to initiate, modify, establish or adjust rates (which by the express definition of said section includes rates, fares and charges, and all classifications, regulations and practices relating thereto), so that the carriers as a whole in each rate group which the Commission may designate, will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income, as in said section defined, equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation; and that for the two years beginning March 1, 1920, the Commission should take as such fair return a sum equal to five and one-half per cent of such aggregate value, but might, in its discre-
[fol. 190] tion, add thereto a sum not exceeding one-half of 1 per cent of such aggregate value to make provision for the uses and purposes of said section prescribed.

It was thus made the duty of this Honorable Commission to establish such rates as would produce from all traffic, state and interstate, of such carriers, for the two years beginning March 1, 1920, an annual net railway operating income in the aggregate equal to five and one-half or six per cent, as the case may be, of the aggregate value of the railway property of the carriers in the group held for and used in the service of transportation.

This Honorable Commission must, therefore, under the express requirements of the law, make up and provide out of rates on interstate traffic all of the required amount of net revenue prescribed by the act that is not contributed by the state traffic of the carriers in the group.

Third

Petitioners show that in the latter part of April and the early part of May, 1920, applications were filed by the railroad companies of the United States, including petitioners, wherein this Commission was requested to increase rates, fares and charges, so that the railroads might earn the net railway operating income provided by law. Upon the filing of these applications, hearings were had before your Honorable Commission and as a result of these hearings this Commission promulgated, on the twenty-ninth of July, 1920, its report and order in the cause designated on the docket of this Commission as Ex Parte 74, and styled, "In the Matter of the Applications of Carriers in Official, Southern and Western Classification Territories for Authority to Increase Rates." This report and accompanying order are respectfully asked to be made a part of this petition.

Fourth

Your petitioners further show that, as will appear from page 229 of said report, this Commission, in accordance with the provisions of the Transportation Act and for the purposes of Ex Parte 74, tentatively determined the aggregate value of all the property of the carriers held for and [fol. 191] used in the service of transportation to be $18,900,000,000. In making this tentative valuation, this Commission did not undertake to separate, and did not separate, property devoted to the purpose of interstate transportation from property devoted to intrastate transporta-

tion, so that the values found in the report include the property of carriers, whether used in interstate or intrastate transportation.

Fifth

In its opinion in Ex Parte 74, this Commission, acting under authority of the Transportation Act, divided the United States into four groups for rate-making purposes. The territorial limits of these groups are fully set out in this opinion, and need not be here repeated. The State of Alabama lies within the Southern Group. The Commission found that the carriers were entitled to earn six per cent upon the aggregate value of the property in each group devoted to the service of transportation, and that, in order to earn that return, the following increase (among others) should be made in the Southern Group in all rates, fares and charges, whether applicable upon interstate or intrastate traffic:

Freight transportation rates, switching charges and other special charges enumerated in the report were permitted to be increased twenty-five per cent.

Sixth

Petitioners further show that this Commission, in authorizing an increase in the rates, fares and charges for the transportation of freight and passengers, did not determine and conclude that the increases permitted and directed in Ex Parte 74 should apply only to interstate transportation, but it was determined by this Commission that the increases there allowed, if applied both to interstate and intrastate traffic, would yield no more than was necessary to permit the carriers to earn six per cent upon the value of their property held for and used in the service of transportation. In other words, there was no attempt made by this Commission to make any separation between interstate revenue and intrastate revenue, or between the [fol.192] expenses for handling interstate traffic and the expenses for handling intrastate traffic.

Seventh

There were present and participating in the proceedings before this Commission in Ex Parte 74 representatives of

the State Commissions, including the Alabama Public Service Commission.

Eighth

Petitioners state that, as will be seen from an examination of the report in Ex Parte 74, it was necessary for the carriers to have the stated increases in freight rates and passenger fares and other charges in order that their net income might equal the amount provided in the Transportation Act, and if they were not permitted to increase intrastate freight rates, as well as passenger fares and other charges, in the State of Alabama in the amounts permitted by this Commission, the railroads in the Southern Group, in which the State of Alabama was situated, would fail to earn the amount of net revenue authorized in the Transportation Act.

Petitioners further show that this Honorable Commission having in Ex Parte 74, in the performance of its duties under the Act, determined the amount of net revenue required by Section 422 of the Transportation Act, 1920, and having declared that this amount should be provided by a uniform increase of rates applicable alike to interstate and intrastate traffic in the group, it was obvious that if the intrastate rates in any state were not increased to correspond with the increases authorized and made in interstate rates under the decision and order of this Commission in Ex Parte 74, the carriers in that particular group would not receive the net railway operating income which this Commission intended they should receive and to which this Commission found they were entitled, unless the deficit so produced was made good by a further increase in the rates on interstate traffic.

[fol. 193] Ninth

Following the decision of the Commission in Ex Parte 74, petitioners made application to the Alabama Public Service Commission for authority, among other things, to increase freight rates and charges, including rates and charges on fertilizers and fertilizer materials, and articles taking the same rates, intrastate in the State of Alabama, in the same amount and to the same extent that this Commission, in Ex Parte 74, authorized increases in rates and charges for interstate transportation.

A hearing was held on such application before the Alabama Public Service Commission on August 17, 1920, with the result that the said Alabama Commission, on August 20, 1920, entered its order, known as Docket No. 3009, wherein and whereby the said Alabama Commission found that the increases sought by the carriers, including increases in the rates and charges on fertilizers and fertilizer materials, and articles taking the same rates, were reasonable and proper, and should be granted, with certain exceptions. The increased rates authorized by the said Alabama Commission on fertilizers and fertilizer materials, and articles taking the same rates, became effective on September 1, 1920, and remained in effect until July 1, 1922.

Tenth

Your petitioners further show that on or about December 1, 1921, this Commission instituted a proceeding of its own motion, bearing the title, "Reduced Rates, 1922, in the Matter of Rates, Fares and Charges of Carriers by Railroad Subject to the Interstate Act," Docket No. 13292.

The purpose of this investigation was to determine what should be on and after March 1, 1922, a fair return upon the value of the property of the carriers held for and used in the service of transportation; what was the aggregate value of such property; and what rate reductions or changes, if any, should be made in order that the carriers might earn such fair return upon the value of their property.

In said proceeding, testimony was heard, arguments were had, and, on May 16, 1922, this Commission filed its report [fol. 194] in the said cause, among other things, fixing five and three-quarters per cent (5¾%) as a reasonable rate of return upon the aggregate value of railway property of carriers, and recommending that a horizontal decrease of approximately ten per cent be made in all existing rates, with certain exceptions set out fully in the report, which exceptions dealt with rates which had been voluntarily or otherwise reduced by the carriers between August 26, 1920, and May 16, 1922. So far as Southern territory was concerned, this reduction was brought about by requiring the carriers to publish rates which would be 12½ per cent higher than the rates in effect on August 25, 1920, the day

prior to the effect *in* date of the increases allowed in Ex Parte 74, with the exceptions already noted. This recommendation of the Commission was accepted by petitioners and practically all other carriers operating in the United States, and, as a result of this decision, effective July 1, 1922, interstate rates and intrastate rates throughout the United States were reduced in the amounts recommended by the Commission in its said decision in Docket 13298.

Your petitioners and all other carriers in the State of Alabama, effective July 1, 1922, voluntarily reduced all intrastate rates, including the rates on fertilizers and fertilizer materials, and articles taking the same rates, to the same basis and by the same amounts as corresponding interstate rates were reduced. The rates so established, effective July 1, 1922, on fertilizers and fertilizer materials, and articles taking the same rates, intrastate in Alabama, remained in effect without change until July 25, 1924.

Eleventh

At the hearings in Reduced Rates, 1922, fertilizer manufacturers sought reductions in the then existing rates on fertilizers and fertilizer materials, in Southern territory, of approximately 22 per cent. The Commission, in its report and order, declined to make a greater reduction in the rates on fertilizers and fertilizer materials in Southern territory than the reductions which it ordered therein in rates on classes and commodities generally in Southern territory.

[fol. 195] In its report in that proceeding, the Commission said:

"The fertilizer for use in production of this year's crops has already moved, but the annual movement of raw materials into the fertilizer plants does not begin until May. Fertilizer manufacturers ask that reductions ranging from 20 to 25 per cent be made on fertilizer materials and that on fertilizer we prescribe for the Southern group a distance scale of rates suggested by them. This scale would involve a reduction of approximately 22 per cent under the scale prescribed by us in Royster Guano Co. v. A. C. L. R. R., 50 I. C. C., 34, as subsequently increased." (68 I. C. C. 719.)

Twelfth

In September, 1921, the Alabama Public Service Commission initiated upon its own motion a general investigation with respect to the entire rate structure in the State of Alabama, including the rates on fertilizers and fertilizer materials, and articles taking the same rates, in carloads.

On May 26, 1924, after hearings, the Alabama Public Service Commission entered its report and order in its Docket No. 4136 in so far as that proceeding related to rates on fertilizers and fertilizer materials, and articles taking the same rates, in carloads. By its order of May 26, 1924, the carriers operating in the State of Alabama were required to publish, within sixty days from the date of said order, certain rates on fertilizers and fertilizer materials, and articles taking the same rates, in carloads, for application intrastate in the State of Alabama, excepting only rates between points in Alabama within the scope of the decisions of the Interstate Commerce Commission in the Meridian case, 60 I. C. C. 5, and 66 I. C. C. 179. A copy of the said order of the Alabama Public Service Commission is hereto attached as Exhibit "A" and made a part of this petition.

The rates ordered established by the Alabama Public Service Commission were published by petitioners under protest, and became effective July 25, 1924, and are now being applied, in accordance with the terms of the said order of the Alabama Commission.

The effect of the aforesaid order of the Alabama Public Service Commission was to very substantially reduce the [fol. 196] revenues of the carriers on fertilizers and fertilizer materials, and articles taking the same rates, moving intrastate between points in the State of Alabama.

Petitioners show that the intrastate rates on fertilizers and fertilizer materials, and articles taking the same rates, in carloads, in effect intrastate in Alabama prior to July 25, 1924, were reasonably low rates, and, on the whole, lower than the level of interstate rates applying from points in other states to Alabama destinations, which interstate rates were not and are not above the level of reasonable rates.

Thirteenth

Petitioners aver that the rates prescribed by the Alabama Public Service Commission, in its said order of May 26, 1924, on fertilizers and fertilizer materials, and articles taking the same rates, in carloads, for intrastate application between points in the State of Alabama, and now in effect, give an undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate commerce in Alabama on the one hand, and persons and localities in interstate commerce on the other hand, and are unjustly discriminatory against interstate commerce and place an undue burden upon interstate commerce, in violation of Section 3 and subdivisions 3 and 4 of Section 13 of the Interstate Commerce Act as amended by Section 416 of the Transportation Act of 1920.

Petitioners further show that if the said rates on fertilizers and fertilizer materials, and articles taking the same rates, so etsablished by the Alabama Public Service Commission are allowed to remain in effect, the purpose of the Interstate Commerce Act will be defeated and the result will be an undue and unreasonable advantage, preference or prejudice between persons and localities in interstate commerce on the one hand, and intrastate commerce on the other, and that the interstate commerce will be unduly, unreasonably and unjustly discriminated against; all of which is forbidden and declared to be unlawful by the Interstate Commerce Act.

Fourteenth

In order that this Commission may see to what extent the rates ordered in by the Alabama Public Service Com- [fol. 197] mission on fertilizers and fertilizer materials, and articles taking the same rates, in carloads will operate to the prejudice and disadvantage of persons, firms and localities in interstate commerce, your petitioners here set out a few typical instances of state and interstate rates on fertilizers and fertilizer materials, and articles taking the same rates, in carloads, to representative Alabama destinations.

Manufacturers of fertilizers and dealers in fertilizer materials located in Atlanta, Georgia, actively compete at Alabama points with manufacturers of and dealers in ferti-

lizers and fertilizer materials at Birmingham and other points in Alabama. Heflin, Alabama, is a station on the main line of the Southern Railway between Atlanta and Birmingham, 85 miles from Atlanta and 82 miles from Birmingham. Prior to July 25, 1924, the rate on fertilizers and fertilizer materials, in carloads, from Birmingham to Heflin, was $2.03 per ton, as compared with a rate of $2.59 per ton from Atlanta to Heflin. Under the order of the Alabama Public Service Commission, the rate from Bir-mingham to Heflin was reduced to $1.80 per net ton, thus increasing the advantage already enjoyed by Birmingham manufacturers and dealers in fertilizers in their rates to Heflin as compared with the rates paid by their competitors from Atlanta to Heflin. Transportation conditions from Birmingham to Heflin are not more favorable than those obtaining from Atlanta to Heflin.

Manufacturers of fertilizers and dealers in fertilizers and fertilizer materials in Atlanta, Georgia, actively compete at Alabama points with manufacturers of and dealers in fertilizers and fertilizer materials at Montgomery, Alabama. Lanette, Alabama, is a station on the Western Railway of Alabama 87 miles from Montgomery and 88 miles from Atlanta. Prior to the effective date of the order of the Alabama Public Service Commission of May 26, 1924, the rate on fertilizers and fertilizer materials, in carloads, from both Montgomery and Atlanta to Lanette was $2.03 per net ton. Under the order of the Alabama Public Service Commission, the rate from Montgomery to Lanette was reduced to $1.85 per net ton, thus giving the Montgomery manufacturers and dealers in fertilizers an advantage of 18 cents per ton on shipments to Lanette, as compared with their competitors in Atlanta. Transportation conditions from [fol. 198] Montgomery to Lanette are not more favorable than those obtaining from Atlanta to Lanette.

Fertilizers and fertilizer materials have in the past moved in considerable volume from both McCarty, Tennessee, and Birmingham, Alabama, to stations on the Alabama Great Southern Railroad between Birmingham and Chattanooga. Keener, Alabama, is a station on the Alabama Great Southern 68 miles from Birmingham and 73 miles from McCarty. Prior to the effective date of the order of the Alabama Public Service Commission of May 26, 1924, the rate on fertilizers and fertilizer materials

from Birmingham to Keener was $2.14 per ton, and from McCarty $2.25 per ton. Under the aforesaid order of the Alabama Public Service Commission, the rate from Birmingham to Keener was reduced from $2.14 to $1.65 per ton, thus increasing the advantage of the Birmingham manufacturers and dealers in fertilizers 49 cents per ton, as compared with the manufacturers at McCarty on shipments to Keener.

Athens, Alabama, is a station on the main line of the Louisville & Nashville Railroad between Birmingham, Alabama, and Nashville, Tennessee, 100 miles from Birmingham and 108 miles from Nashville. Prior to the effective date of the order of the Alabama Public Service Commission of May 26, 1924, the rate on fertilizers and fertilizer materials, in carloads, from both Birmingham and Nashville to Athens was $2.50 per net ton. The effect of the order of the Alabama Public Service Commission was to reduce the rate from Birmingham to Athens to $1.95 per net ton, which rate is 64 cents per net ton less than the present reasonably low interstate rate from Nashville to Athens. Transportation conditions from Birmingham to Athens are not more favorable than those obtaining from Nashville to Athens.

Your petitioners show that they have set out only two or three examples showing a manifest discrimination against interstate commerce and manifest prejudice and disadvantage to persons and localities engaged in interstate commerce in favor of intrastate commerce and persons and localities engaged in intrastate commerce. The few instances above given are illustrative of and represent a situation which prevails generally as to inter-[fol. 199] state rates on fertilizers and fertilizer materials and articles taking the same rates, from points in states other than Alabama to Alabama destinations, as compared with Alabama intrastate rates on fertilizers and fertilizer materials, and articles taking the same rates, prescribed by the Public Service Commission of Alabama and now in effect.

The State of Alabama consumes several hundred thousand tons of fertilizers and fertilizer materials, and articles taking the same rates, annually, and such materials have, in the past, moved in considerable volume from interstate

destinations particularly from points in Tennessee, Georgia and Mississippi, to Alabama destinations.

Fifteenth

Your petitioners aver that the interstate rates on fertilizers and fertilizer materials, and articles taking the same rates, in carloads, now in effect from points in Georgia, Florida, Tennessee, Mississippi and other states, to Alabama destinations are in all respects reasonably low rates. Petitioners further aver that the rates prescribed by the Alabama Public Service Commission on fertilizers and fertilizer materials, and articles taking the same rates, in carloads, for intrastate application between points in Alabama, and now in effect, are unreasonably and unduly low.

Petitioners further show that the rates so prescribed by the Alabama Public Service Commission are generally materially lower than interstate rates on fertilizers and fertilizer materials, in carloads, prescribed by this Commission, after extensive hearings and investigations, for application between points in Alabama and Meridian, Mississippi, and from points in Alabama to points in Georgia.

Petitioners further show that there are no transportation conditions or other conditions which warrant or justify a level of rates intrastate in Alabama lower than the level of interstate rates between points in Alabama and points in contiguous states, or elsewhere in the same general territory.

Sixteenth

[fol. 200] One of the effects of the order of the Alabama Public Service Commission and the reduced rates on fertilizers and fertilizer materials, and articles taking the same rates in carloads, established and made effective by petitioners intrastate between points in the State of Alabama in obedience to said order, will be to greatly reduce the revenues of petitioners derived from the transportation of fertilizers and fertilizer materials, and articles taking the same rates, in carloads, intrastate between points in Alabama.

Petitioners further show that they are advised and believe that manufacturers and dealers in fertilizers located in states other than Alabama will find it extremely difficult, if not impossible, to continue to ship fertilizers and

fertilizer materials, and articles taking the same rates, into Alabama on the present reasonably low intrastate rates, in competition with Alabama dealers and manufacturers who on the extremely and unreasonably low rates prescribed by the Alabama Public Service Commission. Alabama consumers will discontinue buying large quantities of fertilizers and fertilizer materials, and articles taking the same rates, at points in other states, and this tonnage which has moved in the past on reasonably low interstate rates, will be supplanted by tonnage from Alabama points which will move on the unduly and unreasonably low Alabama intrastate rates, which rates are generally materially less than the reasonable interstate rates into Alabama, thereby resulting in great loss of revenue to petitioners.

Wherefore your petitioners pray on their own behalf and on behalf of all of the carriers operating in the State of Alabama, that this Commission institute at an early date an investigation with respect to the matters and things herein set forth, and that after due notice has been given to the State of Alabama and the authorities thereof, and after such hearing or hearings as the Commission may direct, an order be entered by this Commission declaring the rates on fertilizers and fertilizer materials, and articles taking the same rates, in carloads, so established by the Alabama Pubilc Service Commission, to be unlawful and [fol. 201] to cause an undue and unreasonable advantage, preference and prejudice as between persons and localities in interstate commerce on the one hand and intrastate commerce on the other, and undue, unreasonable and unjust discrimination against interstate commerce, and that there be taken in the premises all such further proceedings, and that there be entered all such further order or orders as may be necessary to remove this unjust and undue discrimination, as set out in this petition and as may be shown as the result of the investigation to be ordered by this Commission.

And petitioners will ever pray.

Atlantic Coast Line Railroad Company, Seaboard Air Line Railway Company, Southern Railway Company, Alabama Great Southern Railroad Com-

pany, Atlanta, Birmingham & Atlantic Railway Company (B. L. Bugg, Receiver), Central of Georgia Railway Company, Louisville & Nashville Railroad Company, Mobile & Ohio Railroad Company, The Nashville, Chattanooga & St. Louis Railway, Northern Alabama Railway Company, St. Louis-San Francisco Railway Company, Illinois Central Railroad Company, Western Railway of Alabama, by R. V. Fletcher, W. A. Northcut, Charles J. Rixey, Frank W. Gwathmey, Henry Thurtell, M. G. Roberts, W. N. McGehee, Attorneys for Petitioners.

Washington, D. C., July 30, 1924.

[fol. 202] EXHIBIT "A"

STATE OF ALABAMA:

ALABAMA PUBLIC SERVICE COMMISSION, MONTGOMERY
ALABAMA PUBLIC SERVICE COMMISSION,

vs.

ALABAMA, FLORIDA & GULF RAILROAD COMPANY, and All Other Railroads in Alabama

Citation: To show cause why this Commission should not establish a just and reasonable scale of freight rates on all commodities moving between stations on your respective lines in Alabama

Docket 4136

Rates on Fertilizer, Fertilizer Materials, and Related Articles

Order

This cause coming on to be heard before the Alabama Public Service Commission, and the parties having appeared and submitted their evidence, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclu-

sions thereon, which is hereby referred to and made a part hereof—

It is ordered by the Commission, That the respondent railroads be, and they are hereby, authorized, directed and required, jointly and severally, according as their interests may appear, within sixty days from this date, to publish, file and put into effect, in the manner prescribed by law, and thereafter to charge, impose and maintain, until the further order of this Commission, on Alabama intrastate traffic moving in carloads, the scales or schedules of maximum rates shown in Appendix "C" to the report herein, except that the railroads designated in the report as short lines may, if they so desire, publish, apply and observe the scales or schedules of rates shown in said Appendix "C" for the standard lines; and,

[fol. 203] It is further ordered by the Commission, That the said respondent railroads shall publish, use and observe, in connection with the scales or schedules of rates mentioned in the next preceding paragraph, the list of articles or commodities and commodity descriptions published and shown in Southern Classification No. 46, Agent E. H. Dulaney's I. C. C. No. 15, and the supplements thereto in force and effect on this date, under the rating of "Fertilizer, carloads," except as shown in the next succeeding paragraph; and,

It is further ordered by the Commission, That the respondent railroads may publish, use and maintain, in connection with the scales or schedules of rates and list of articles or commodities shown in the two preceding paragraphs, the same minimum carload weights as shown in the classification mentioned in the next preceding paragraph where such minimum carload weights are higher than 30,000 pounds, and that where such minimum carload weights are now 30,000 pounds or less (except on cottonseed hulls, carloads, the minimum carload weight of which shall not be higher than 30,000 pounds) they may be increased to 40,000 pounds; and,

It is further ordered by the Commission, That the basis for constructing or making less than carload rates on the articles or commodities involved herein now authorized and published in the said Southern Classification No. 46, Agent E. H. Dulaney's I. C. C. No. 15, and the supplements

thereto in force and effect on this date, shall be published and observed by the carriers in connection with the carload rates herein authorized and required.

Dated at Montgomery, Alabama, May 26, 1924.

Alabama Public Service Commission, by A. G. Patterson, President.

I hereby certify that the above and foregoing is a true and correct copy of order entered in the above cause on this the 26th day of May, 1924.

Jno. Brandon, Secretary.

[fol. 204] Appendix "C"

Maximum Commodity Rates on Fertilizer, Fertilizer Materials, and Related Articles, Carloads

Rates in Cents per Ton of 2,000 Pounds

Distance	1	2	3	4	5
5	80	...	...	96	...
10	90	120	132	108	138
15	100	130	143	120	150
20	110	140	144	132	162
25	120	150	155	144	174
30	125	155	171	150	180
35	130	160	176	156	186
40	135	165	182	162	192
45	140	170	187	168	198
50	145	175	193	174	204
55	150	180	198	180	210
60	155	185	204	186	216
65	160	190	209	192	222
70	165	195	215	198	228
75	170	200	220	204	234
80	175	205	226	210	240
85	180	210	231	216	246
90	185	215	237	222	252
95	190	220	242	228	258
100	195	225	248	234	264
110	205	235	259	246	276
120	215	245	270	258	288
130	225	255	281	270	300

Distance	1	2	3	4	5
140	235	265	292	282	312
150	245	275	303	294	324
160	255	275	303	306	326
170	265	285	314	318	338
180	275	295	325	330	350
190	285	305	336	342	362
200	295	315	347	354	374
210	305	325	358	366	386
220	315	335	369	378	398
[fol. 205]					
230	325	345	380	390	410
240	335	355	391	402	422
250	345	365	402	414	434
260	355	375	413	426	446
280	365	385	424	438	458
300	375	395	435	450	470
320	385	405	446		
340	395	415	457		
360	405	415	457		
380	415	425	468		
400	425	435	479		
420	435	445	490		
440	445	455	501		
460	455	465	512		
480	465	475	523		
500	475	485	534		
520	485	485	534		

Explanation of Columns

The specific commodity Rate Tables shown above shall be applied as follows:

Rate Table No. 1. For single-line application between points within this state for the maximum distance of each line referred to in the report as short lines.

Rate Table No. 2. For joint-line application between points within this state located on two or more of the severally named railroads referred to in the report as standard lines.

Rate Table No. 3. For joint-line application between points within this state where the commodity moves over one or more standard lines and over one or more short lines included in the report.

Rate Table No. 4. For single-line application between points within this state for the maximum distance of each line referred to in the report as short lines.

Rate Table No. 5. For joint-line application between points within this state where the commodity moves exclusively over two or more of the carriers referred to in the report as short lines.

[fol. 206] Certificate of Secretary of Interstate Commerce Commission—Filed January 20th, 1928

Interstate Commerce Commission, Washington

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached is a true copy of order of the Commission entered October 14, 1924, in Case No. 16336, Rates on Fertilizers and Fertilizer Materials Within the State of Alabama, the original of which is now on file and of record in the office of this Commission.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 12th day of January, A. D. 1928.

George B. McGinty, Secretary of the Interstate Commerce Commission. (Seal.)

Exhibit Number 5 to Answer of Alabama Great Southern Railway Company et al.—Filed January 20th, 1928

Copy

At a General Session of the Interstate Commerce Commission, Held at Its Office in Washington, D. C., on the 14th Day of October, A. D. 1924

No. 16336

Rates on Fertilizers and Fertilizer Materials Within the State of Alabama

Order

It appearing, That a petition has been filed on behalf of all the steam railroads operating in the state of Alabama

averring that the Alabama Public Service Commission by order promulgated on the 26th day of May, 1924, required petitioners to establish rates on fertilizers and fertilizer materials within said state which are less than those permitted or required to be established by this Commission for interstate traffic;

[fol. 207] It further appearing, that said petitioners allege that the observance by themselves of said order of the Alabama Public Service Commission will cause and result in undue and unreasonable preference and advantage to intrastate commerce, to the undue and unreasonable prejudice and disadvantage of interstate commerce and will result in unjust and unreasonable discrimination against interstate comerce;

And it further appearing, That by the said petition there have been brought in issue rates imposed by the authority of the state of Alabama:

It is ordered, (1) That an investigation be, and it is hereby, instituted to determine whether the rates on fertilizers and fertilizer materials required by the Alabama Public Service Commission to be maintained by said railroads, cause or will cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce or foreign commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce; and as to what rates, if any, or what maximum or minimum, or maximum and minimum shall be prescribed to be charged by the petitioners, in order to remove such advantage, preference, prejudice or discrimination, if any, as may be found to exist;

(2) That all railroads subject to our jurisdiction operating within said state of Alabama be, and they are hereby, made respondents to this proceeding, and that a copy of this order be served upon each of said respondents, and that the state of Alabama be notified of this proceeding by sending copies of this order, and of said petition, by registered mail, addressed to the Governor of the State of Alabama, at Montgomery, Ala., and to the Alabama Public Service Commission, at Montgomery, Ala.

(3) That notice of this proceeding be given to the public by depositing a copy of this order in the office of the Secretary of the Commission, at Washington, D. C.

[fol. 208] (4) That this proceeding be assigned for hearing at such time and places as the Commission may hereafter direct.

By the Commission.

George B. McGinty, Secretary. (Seal.)

Certificate of Secretary of Interstate Commerce Commission—Filed January 20th, 1928

Interstate Commerce Commission, Washington

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached is true copy of order of the Commission entered October 7, 1924, in Case No. 16295, Fertilizers and Fertilizer Materials Between Southern Points, the original of which is now on file and of record in the office of this Commission.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 12th day of January, A. D. 1928.

George B. McGinty, Secretary of the Interstate Commerce Commission. (Seal.)

Exhibit Number 6 to Answer of Alabama Great Southern R. R. Co. et als.—Filed January 20th, 1928

Copy

At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 7th Day of October, A. D. 1924

No. 16295

Fertilizer and Fertilizer Materials Between Southern Points

Order

It appearing, That in many instances interstate rates on fertilizers, fertilizing compounds, and fertilizer materials

between points in southern classification territory differ materially for substantially similar hauls and that many [fol. 209] of said rates are higher for shorter distances than for longer distances over the same line or route;

And it appearing, from numerous formal and informal complaints to this commission, that said interstate rates on fertilizers, fertilizing compounds, and fertilizer materials are in general unsatisfactory to shippers thereunder, that a general revision thereof has been proposed by the carriers serving said territory, and that petitions have been filed by carriers operating in the states of South Carolina and Alabama, alleging that the rates on fertilizers and fertilizer materials in effect within those states cause undue and unreasonable advantage, preference and prejudice as between persons and localities in interstate commerce on the one hand and intrastate commerce on the other;

It is ordered, That a proceeding of investigation and inquiry be, and it is hereby, instituted by this commission on its own motion into and concerning said interstate rates on fertilizers, fertilizing compounds, and fertilizer materials and the charges resulting therefor, applicable between points in the territory described in the next following paragraph, with a view to determining whether said rates and charges are unreasonable or are unduly prejudicial to or unduly preferential of particular localities or persons and to making such order or orders as may be proper in the premises.

It is further ordered, That said proceeding of investigation and inquiry shall include said rates and charges applicable in interstate commerce between points in the following territory:

1. Between points in the states of Kentucky (except local points on the Chesapeake & Ohio Railway, Tennessee, Mississippi, Alabama, Georgia, Florida, North Carolina, South Carolina, and Louisiana east of the Mississippi River; also between points on the north bank of the Ohio River, Cairo, Ill., to Cincinnati, Ohio, inclusive, and Helena, Ark., on the one hand, and points in the above-named states on the other. [fol. 210] 2. Between points in the state of Virginia on the one hand and points in the state of Kentucky (except local points on the Chesapeake & Ohio Railway and south bank Ohio River crossings), Tennessee, Mississippi, Alabama,

Georgia, Florida, South Carolina, North Carolina, and Louisiana east of the Mississippi River on the other.

It is further ordered, That the common carriers named in the appendix hereto be, and they are hereby, made respondents to the proceeding.

And it is further ordered, That this proceeding be assigned for hearing at such times and places as the commission may hereafter direct.

By the Commission:

George B. McGinty, Secretary. (Seal.)

Appendix

Aberdeen and Rockfish Railroad Company; Alabama Central Railroad Company; Alabama Central Railway; The Alabama Great Southern Railroad Company; Alabama Northern Railway Company and R. L. Schuessler, Receiver; Alabama, Tennessee & Northern Railroad Corporation; Alabama and North Western Railroad Company; The Alabama and Vicksburg Railway Company; Albany Southern Railroad Company; Albemarle Steam Navigation Company; Alcolu Railroad Company; The Andalusia, Florida and Gulf Railway Company; Appalachian Railway Company; Apalachicola Northern Railroad Company; Asheville Southren Railway Company; The Asheville and Craggy Mountain Railway Company; Atlanta, Birmingham & Atlantic Railway Company and B. L. Bugg, Receiver; The Atlanta, Stone Mountain & Lithonia Railway Company; Atlanta & St. Andrews Bay Railway Company; Atlanta and West Point Railroad Company; Atlantic Coast Line Railroad Company; Atlantic and Yadkin Railway Company and A. E. Smith and J. W. Fry, Receivers; Augusta-Aiken Railway & Electric Corporation; Augusta Northern Railway; Augusta and Summerville Railroad Company; Augusta-Savannah Line (M. H. Rowse and E. J. [fol. 211] Black, owners); Baltimore & Carolina Steamship Company of Baltimore City; The Baltimore & Ohio Railroad Company; The Baltimore & Virginia Steamboat Company; Bamberg, Ehrhardt & Walterboro Railway Company; Batesville Southwestern Railroad Company, Estate of R. J. Darrell, Lessee; Belt Railway Company of Chattanooga; Bennett's North Carolina Line; Bennettsville and Cheraw Railroad Company; Birmingham Belt Railroad Company; Birmingham, Columbus & St. Andrews Railroad Company,

and S. A. Alford, Receiver; Birmingham and Northwestern Railway Company; Birmingham, Selma and Mobile Railroad Company; Birmingham Southern Railroad Company; Birmingham & Southeastern Railway Company, and Winton M. Blount and John T. Cochrane, Receivers; Black Mountain Railroad Company; Blue Ridge Railway Company; Bonlee & Western Railway Company; Bowdon Railway Company; Buffalo, Union-Carolina Railroad; Buxton Line, Incorporated; Cadiz Railroad Company; Caloosahatchie River Steamboat Company; Carolina Railroad Company; Carolina, Clinchfield and Ohio Railway; Carolina, Clinchfield and Ohio Railway of South Carolina; Carolina & Northeastern Railroad Company; Carolina & Northwestern Railway Company; Carolina & Tennessee Southern Railway Company; Carolina Western Railroad; Carrollton & Worthville Railroad Company; Cashie River Line; Central of Georgia Railway Company; Charleston & Western Carolina Railway Company; Charlotte Harbor and Northern Railway Company; The Charlotte, Monroe and Columbia Railroad Company; Chattahoochie Valley Railway Company; Chesapeake Western Railway; The Chesapeake and Ohio Railway Company; Chesterfield and Lancastern Railroad Company; Chicago, Memphis & Gulf Railroad Company; Cincinnati, Burnside & Cumberland River Railway Company; The Cincinnati, New Orleans & Texas Pacific Railway Company; Cliffside Railroad Company; Clyde Steamship Company; Collins & Glenville Railroad Company; Columbia, Newberry & Laurens Railroad Company; Columbus and Greenville Railway Company; Cumberland Railway Company; The Cumberland Railroad Company, and J. R. Campbell, Receiver; Cumberland Transportation Company; Cumberland & Manchester Railroad Company; [fol. 212] Danville and Western Railway Company; DeKalb & Western Railroad Company; The Dover and South Bound Railroad Company; Durham and Southern Railway Company; East Carolina Railway; The East Tennessee and Western North Carolina Railroad Company; East and West Coast Railway; Eastern Carolina Transportation Company; Edgemoor & Manetta Railway Company; Ensley Southern Railway Company; Elkin & Alleghany Railroad Company; The Evansville & Bowling Green Packet Company; Fernwood, Columbia & Gulf Railroad Company; Flemingsburg & Northern Railroad Company; Flint River

and Northeastern Railroad Company; Florida Central and Gulf Railway; Florida East Coast Railway Company; Frankfort and Cincinnati Railway Company; French Broad Railroad Company; Gainesville Midland Railway and Gordon C. Carson and W. B. Veazey, Receivers; Gainesville & Northwestern Railroad Company; Garyville Northern Railroad Company; Georgia Railroad; Georgia, Ashburn, Sylvester & Camilla Railway Company; Georgia, Florida and Alabama Railway Company; The Georgia Northern Railway Company; Georgia Southern and Florida Railway Company; The Georgia Southwestern and Gulf Railroad Company, Georgia and Florida Railway, and John Skelton Williams, Receiver; Greene County Railroad Company; Greenville and Northern Railway Company; Gulf, Mobile and Northern Railroad Company; Gulf and Ship Island Railroad Company; Gulf and Southern Steamship Company; Gulfport and Mississippi Coast Traction Company; Hampton & Branchville Railroad and Lumber Company; Harriman and Northeastern Railroad Company; Hartwell Railway Company; High Point, Randleman, Asheboro and Southern Railroad Company; High Point, Thomasville & Denton Railroad Company; Illinois Central Railroad Company; Independent Line Steamers; Interstate Railroad Company; Jackson & Eastern Railway Company; Kentucky & Indiana Terminal Railroad Company; Kentucky & Tennessee Railway; Kentucky, Rockcastle & Cumberland Railroad Company; The Kinston-Carolina Railroad Company; Knoxville & Carolina Railroad Company; Kissimmee River Railway; Kosciusko & South Eastern Railroad Company; Lancastern and Chester Railway Company; Laurel [fol. 213] Fork Railway Company; Laurinburg & Southern Railroad Company; Lawndale Railway and Industrial Company; Linville River Railway Company; The Little River Railroad Company; Live Oak, Perry and Gulf Railroad Company; Loranger, Louisiana & Northeastern Railroad Company, and A. Loranger, Receiver; Louisiana Railway & Navigation Company; Louisville, Henderson and St. Louis Railway Company; Louisville, New Albany & Corydon Railroad Company; Louisville and Nashville Railroad Company; Louisville and Wadley Railroad Company; Macon, Dublin and Savannah Railroad Company; Mammoth Cave Railroad Company; Manistee & Repton Railroad Company, Inc.; Manteo-Norfolk Transportation Company; The Marianna & Blountstown Railroad Company;

Marion & Rye Valley Railway Company; Marion and Southern Railroad Company; Maxton, Alma and Southbound Railroad Company; Merchants & Miners Transportation Company; Milltown Air Line Railway; Milstead Railroad Company; Mississippi & Alabama Railroad Company; Mississippian Railway; Mississippi Central Railroad Company; Mississippi Eastern Railway Company; Mississippi Export Railroad Company; Mississippi Southern Railroad; Mississippi-Warrior Service; Mississippi & Western Railroad Company; Mobile and Ohio Railroad Company; Moore Haven and Clewiston Railway Company; Morgan & Fentress Railway Company; Muscle Shoals, Birmingham & Pensacola Railway Company; Nashville & Atlantic Railroad Company; The Nashville, Chattanooga & St. Louis Railway; Nashville Interurban Railway; Natchez, Columbia & Mobile Railroad Company; Natchez & Southern Railway Company; Nelson & Albemarle Railway Company; The New Holland, Higginsport & Mt. Vernon Railroad Company; New Orleans Great Northern Railroad Company; New Orleans, Natalbany and Natchez Railway Company; New Orleans, Texas & Mexico Railway Company; New Orleans and Northeastern Railroad Company; Norfolk Southern Railroad Company; Norfolk & Mobjack Bay Steamboat Company; Norfolk and Portsmouth Belt Line Railroad Company; Norfolk and Washington Steamboat Company; Norfolk and Western Railway Company; Northern Alabama Railway Company; North River Line, Inc.; [fol. 214] North Western Railroad Company of South Carolina; Norton and Northern Railway; Ocean Steamship Company of Savannah; Ohio & Kentucky Railway Company; Oneida & Western Railroad Company; Paducah & Illinois Railroad Company; Palatka & Jacksonville Steamboat Line; Pearl River Transportation Company; Pearl River Valley Railroad Company; Peninsular and Occidental Steamship Company; The Pennsylvania Railroad Company; Pensacola, St. Andrews and Gulf Steamship Company; The Pickens Railroad Company; Piedmont and Northern Railway Company; Pigeon River Railway Company; Pontchartrain Railroad Company; Raleigh and Charleston Railroad Company; Randolph and Cumberland Railway Company and J. S. Crews, Receiver; Richmond, Fredericksburg and Potomac Railroad Company; Roanoke Railway Company; Roanoke River Steamboat Company; Rockcastle River Railway Company; Rockingham Railroad Company; Rome & Northern Railway Company; Rosslyn Con-

necting Railroad Company; St. Johns River Terminal Company; St. Louis-San Francisco Railway Company; St. Louis & Tennessee River Packet Company; St. Marys Railroad Company; Salmon Creek Line; Sandersville Railroad Company; The Sardis and Delta Railroad Company; Savannah and Atlanta Railway, and Charles E. Gay, Jr., and Thomas B. Felder, Receivers; Savannah and Statesboro Railway Company; Seaboard Air Line Railway Company; Shearwood Railway Company; The Sievern & Knoxville Railroad Company; Smithfield, Newport News & Norfolk Steamship Company; Smithonia & Dunlap Railroad Company; Smoky Mountain Railway Company; The South Georgia Railway Company; Southern Railway Company; State University Railroad Company; Statesboro Northern Railway (Georgia & Florida Railway, John Skelton Williams, Receiver, Lessee); Sumpter & Choctaw Railway Company; Sylvania Central Railway Company; Talbotton Railroad Comapny; Tallulah Falls Railway Company, and J. F. Gray, Receiver; Tampa Northern Railroad Company; Tampa Southern Railroad Company; Tampa & Gulf Coast Railroad Company; Tampa & Jacksonville Railway Company; Tampa-St. Petersburg Transportation Company; Tavares & Gulf Railroad; Tennessee & Carolina Southern [fol. 215] Railway Company; Tennessee Railroad Company; Tennessee, Alabama and Georgia Railroad Company; Tennessee Central Railway Company; Tennessee, Kentucky & Northern Railroad Company; Tennessee River Navigation Company; Tennessee and North Carolina Railway Company; Tennessee Western Railroad Company; Thronsteeska Navigation Company; The Townsville Railroad Company; Tri-State Navigation Company; Tuckaseegee & Southeastern Railway Company; Tuskegee Railroad Company; Union Railway Company (Memphis, Tenn.); The Union Point and White Plains Railroad Company; Virginia Blue Ridge Railway Company; Virginia Southern Railroad Company; Virginia Steamship Company; Virginia and Carolina Southern Railroad Company; The Virginian Railway Company; Waccamaw Transportation Company; Wadley Southern Railway Company; Wanchese Line; Ware Shoals Railroad; Warrenton Railroad Company; Washington-Virginia Railway Company; Washington and Choctaw Railway Company; Washington & Lincolnton Railroad Company; Washington and Old Dominion Railway; Washington and Vandemere Railroad Company; Waycross and Southern Railroad Company; Waycross and

Western Railroad Company; Wellington & Powellsville Railroad Company; The Western Railway of Alabama; Wilmington, Brunswick & Southern Railroad Company; Winston-Salem Southbound Railway Company; Wrightsville & Tennille Railroad Company; Yadkin Railroad Company; The Yazoo and Mississippi Valley Railroad Company.

Certificate of Secretary of Interstate Commerce Commission—Filed January 20th, 1928

Interstate Commerce Commission, Washington

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached is a true copy of notice, dated March 9, 1925, signed Joseph B. Eastman, Commissioner, in Case No. 16295, Fertilizers and Fertilizer Materials Between Southern Points, the original of which is now on file and of record in the office of this Commission.

[fol. 216] In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 12th day of January, A. D. 1928.

George B. McGinty, Secretary of the Interstate Commerce Commission. (Seal.)

Exhibit Number 7 to Answer of Alabama Great Southern Railroad Company et al.—Filed January 20th, 1928

Copy

Interstate Commerce Commission

No. 16295[1]

Fertilizer and Fertilizer Materials Between Southern Points

Notice

By order entered October 7, 1924, the Commission, on its own motion, instituted an investigation of the interstate

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[1] For purposes of hearing, there will be consolidated with this proceeding the following dockets: No. 16335, Rates on fertilizers and fertilizer materials within the State of South Carolina; No. 16336, Rates on fertilizers and fertilizer materials within the State of Alabama; and No. 16484, Rates on fertilizers and fertilizer materials within the State of Georgia.

rates on fertilizers, fertilizing compounds, and fertilizer materials between points in Southern Classification Territory, including rates between points in that territory on the one hand and north bank Ohio River crossings, Helena, Ark., and points in Virginia on the other. This investigation was deemed advisable because of widespread differences in the rates for substantially similar hauls, numerous departures from the long-and-short-haul provision of the fourth section, lack of uniformity between the general levels of the interstate rates and the intrastate rates in several of the States, and the frequent complaints with reference to the rates. The purpose of the proceeding is to determine upon a basis of rates for interstate application throughout the territory involved which will be reasonable for the transportation of this particular traffic, will be free from undue [fol. 217] prejudice and preference, and will conform to the fourth section of the act. With the proceeding there have been consolidated for hearing investigations under section 13 of the act instituted upon petition of carriers and involving alleged undue preference of intrastate traffic in Alabama, South Carolina, and Georgia, and alleged undue prejudice to interstate traffic. While other intrastate rates have not been brought in issue the desirability of fixing interstate rates which can fairly and appropriately be used as a basis for achieving harmony between the interstate and intrastate rates will be kept constantly in mind. With this end in view, testimony relating to intrastate adjustments will be freely admitted.

As an initial step in the investigation, the respondent carriers will be expected to present at the first hearing the basis of rates which they believe should be established, together with the evidence supporting this basis. Ample time has been allowed for the preparation of such a basis, and it is desirable that the proposal should, if possible, be made public and distributed to interested parties prior to the first of April.

Among the subjects which it appears should be developed at the hearings are these:

1. At what points are the principal fertilizer mills located?

2. Is fertilizer used generally throughout the territory, or is its use confined to particular sections?

3. What articles are known and shipped as complete fertilizers or as fertilizer materials, and should any of such articles take lower or different rates than those applicable on commercial fertilizers, and if so which articles, and what should be the relationship?

4. How long are the hauls, generally speaking, of the materials?

5. How long are the hauls, generally speaking, of commercial fertilizers?

6. What is the volume of the intrastate traffic as compared with the interstate traffic and what are the relative levels of the present interstate and intrastate rates?

[fol. 218] 7. Do the empty cars require any special cleaning after use in fertilizer traffic?

8. In the Blackshear case, 87 I. C. C. 654, a higher basis of rates was prescribed to points in Florida sought of the Jacksonville-Pensacola line than was prescribed to points on and north of that line. Should such an adjustment be favored, and why?

9. In a number of decisions the Commission has said that fertilizer is a low grade traffic, subject to no great risk in transit, and requiring no special service for its transportation. Its free movement and use is an auxiliary tending to produce and furnish a larger volume of traffic and thus promote the prosperity of carriers and their patrons, so that considering both commercial and transportation conditions it is entitled to comparatively low rates, 16 I. C. C. 52, 53; 20 I. C. C. 554, 555; 26 I. C. C. 225, 353.

Consideration should be given to this phase of the matter. In other words, should fertilizer be accorded rates below what would otherwise be normal because of its value to the agricultural industry in increasing production, and its consequent value to the carriers because of the resultant increase in tonnage through its use?

10. In the Royster Case, 50 I. C. C. 34, it was stated that the average loading was about 17 tons per car, and the minimum weight was fixed at 30,000 pounds. Would it be

desirable to maintain a higher minimum provided rates were fixed with this heavier loading in mind?

11. It is understood that there are many less-than-carload rates on fertilizer. The necessity for such commodity rates in lieu of the normal class rates, if any, and their relationship to the carload rates should be developed.

What is the volume of such less-than-carload shipments, and the length of the hauls, generally speaking?

12. What, if any, should be the differentials between single-line and joint-line rates?

13. In addition to general evidence with respect to the nature, volume and distribution of movement, an actual traffic test will be desirable covering a period when the traffic under consideration is moving freely. Suggestions [fol. 219] from carriers and shippers will be welcomed as to the form which this test should take.

With respect to the fourth section applications which will be set for hearing in connection with this proceeding, it will be necessary for the present to explain of record only typical instances of the relief desired under the proposed adjustment and the justification therefor.

Since the record promises to be lengthy, every effort should be made by the representatives both of the carriers and of the shippers to condense their evidence into the smallest possible compass. Explanations of exhibits which duplicate at length what is shown on the face of the exhibit should be avoided. Discussion of past decisions of the Commission should ordinarily be reserved for brief and argument. Evidence which is merely cumulative should be avoided, and cross-examination should be directed to the development of the facts and not allowed to degenerate into argument.

The first hearing will be held at Atlanta, Ga., in the Hotel Biltmore, beginning April 20, 1925, at 10 a. m., standard time. Notice respecting further hearings for the introduction of testimony by others than the respondent carriers will be issued at a later date.

Joseph B. Eastman, Commissioner.

March 9, 1925.

IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDMENT TO BILL OF COMPLAINT—Filed Jan. 26, 1928

To the Honorable the Judges of the District Court of the United States for the Northern District of Alabama, Southern Division:

State of Alabama and Alabama Public Service Commission, plaintiffs in the above-styled cause, come now and amend their petition, and for cause of amendment say:

[fol. 220]

7

By adding to and at the end of paragraph 7 of the original petition the following:

While paragraph 2 of the foregoing quotation from the order of the Interstate Commerce Commission refers to all railroads operating within the State of Alabama without specifically naming them, petitioners, being advised, allege that the only purpose effected by such order was to make the short line railroads not named but here made defendants, parties to the original complaint and that said order in no wise enlarged the complaint filed in Docket 16336.

10

By adding to the end of paragraph 10 the following:

That said order of October 7, 1924, did not specifically attack or put in issue rates in the State of Alabama on what is known as short line roads.

20-a

By adding a new paragraph to be known as 20-a, as follows:

Subsequent to the filing of this petition, and on the 22nd day of December, 1927, the Interstate Commerce Commission without further notice of hearing entered its order amending and extending its order of October 3, 1927, "Exhibit C" hereto, and included therein the following railroads:

Alabama and Northwestern Railroad.
Ashland Railway.

Alabama, Tennessee and Northern Railway Corporation.
Chattahoochee Valley Railway Company.
Mobile & Gulf Railroad Company.
The Tuskegee Railroad.
Alabama Central Railroad.
Alabama Central Railway.
Birmingham, Selma and Mobile Railroad.
Birmingham and Southeastern Railroad Company.
Mississippi and Alabama Railroad Company.
Sumter and Choctaw Railway Company.
[fol. 221] Birmingham Southern Railroad Company.
Alabama, Florida & Gulf Railroad.
Atlanta & St. Andrews Bay Railway.
Gulf, Mobile & Northern Railroad Company.
Manistee & Repton Railroad.
The Muscle Shoals, Birmingham & Pensacola Railroad Company.
Tennessee, Alabama & Georgia Railway.

A copy of such order of December 22, 1927, is attached hereto, marked "Exhibit E," and made part hereof. Because of such order defendants named therein are necessary and proper parties defendants hereto and are hereby made parties defendant.

23

By adding at the end of paragraph 23 the following:

Since the filing of this complaint, and on December 22, 1927, as shown by "Exhibit E" hereto attached, these short line railroads were included in the order of October 3, 1927, and these short line railroads are threatening to file tariffs in accordance with said order.

24

By adding after the second word in paragraph 24 of the original petition the following:

other than the short line railroads named in "Exhibit E" attached hereto,

and by adding at the end of paragraph 24 the following:

The defendants made parties hereto by this amendment are threatening to file tariffs in accordance with the order

of December 22, 1927, and will do so unless that order be set aside or enjoined.

26-a

By adding a new paragraph to the original petition herein to be numbered 26-a, as follows:

There are made parties defendant hereto new defendants, to-wit:

[fol. 222] Alabama and Northwestern Railroad Company, incorporated under the laws of Alabama, with its principal office and place of business in Mobile, in said State;

Ashland Railway Company, incorporated under the laws of Alabama, with its principal office and place of business in Ashland, in said State;

Alabama, Tennessee and Northern Railroad Corporation, incorporated under the laws of Alabama, with its principal office and place of business in Mobile, in said State;

Chattahoochee Valley Railway Company, incorporated under the laws of Alabama, with its principal office and place of business in West Point, in the State of Georgia;

The Mobile & Gulf Railroad Company, incorporated under the laws of Alabama, with its principal office and place of business in Louisville, in the State of Kentucky;

The Tuskegee Railroad Company, incorporated under the laws of Alabama, with its principal office and place of business in Tuskegee, in said State;

Alabama Central Railroad Company, incorporated under the laws of Alabama, with its principal office and place of business in Jasper, in said State;

Alabama Central Railway, incorporated under the laws of Alabama, with its principal office and place of business in Montgomery, in said State;

Birmingham, Selma and Mobile Railroad Company, incorporated under the laws of Alabama, with its principal office and place of business in Brent, in said State;

Birmingham and Southeastern Railroad Company, incorporated under the laws of Alabama, with its principal office and place of business in Union Springs, in said State;

Mississippi and Alabama Railroad Company, incorporated under the laws of Mississippi, with its principal office and place of business in Leaksville, in said State;

Sumter and Choctaw Railway Company, incorporated under the laws of Alabama, with its principal office and place of business in Bellamy, in said State;

Birmingham Southern Railroad Company, incorporated under the laws of Alabama, with its principal office and place of business in Birmingham, in said State;

Alabama, Florida & Gulf Railroad Company (R. D. Crawford and W. W. Beal, Receivers), incorporated under the laws of Alabama, with its principal office and place of business in Dothan, in said State;

[fol. 223] Atlanta & St. Andrews Bay Railway Company, incorporated under the laws of Alabama, with its principal office and place of business in Panama City, in the State of Florida;

Manistee & Repton Railroad Company, incorporated under the laws of Alabama, with its principal office and place of business in Monroeville, in said State;

The Muscle Shoals, Birmingham & Pensacola Railroad Company, incorporated under the laws of Florida, with its principal office and place of business in Pensacola, in said State;

Tennessee, Alabama & Georgia Railway, incorporated under the laws of Georgia, with its principal office and place of business in Chattanooga, in the State of Tennessee.

That as to all of said railroads the allegations hereinbefore made as to the testimony and other matters contained in this bill apply, except there was no petition by said short line railroads, they were not, as plaintiffs are advised and believe, included in the investigation and were, therefore, not entitled to any order whatsoever. As to such short line railroads the facts are that they are permitted under the legal intrastate rates in Alabama to charge higher rates than the railroads originally defendant hereto, and their condition was fully considered by Alabama Public Service Commission in fixing rates thereover.

27 (e-1)

By amending paragraph 27 after sub-paragraph (e) thereof by adding a new sub-paragraph to be designated as (e-1), and to read:

In finding and ordering that the intrastate scales applicable to the short line railroads named in Exhibit E hereto were involved in the investigation and in finding and adjudicating that the rates to be charged by short line railroads could be increased over the rates thereover on fertilizers and fertilizer materials established by the Alabama Public Service Commission.

[fol. 224] 27 (m)

By amending paragraph 27 at the end thereof by adding a new sub-paragraph to be called (m), and to read:

In adjudicating rates over short line railroads named in Exhibit E hereof without evidence or pleadings and without such rates being involved in any proceeding before the Intertsate Commerce Commission, for which special reasons it is claimed the order of December 22, 1927, is unlawful, and all the reasons applicable to the original defendants are also urged as additional reasons why the order of the Interstate Commerce Commission of December 22, 1927, is unlawful, illegal and void.

Wherefore, petitioners, plaintiffs herein, pray that this amendment be allowed and that the railroads named in Exhibit E and named hereinbefore be made parties defendant herein and that they be served with subpœna as though originally made parties defendant; that plaintiffs, petitioners herein, have all the relief against the original defendants and these new defendants prayed in the original petition and that such relief apply both to the order of October 3, 1927, and to the order of December 22, 1927; and petitioners pray for such other and further relief as they may be entitled to in the premises.

Charlie C. McCall, Attorney General, State of Alabama, J. Q. Smith, Asst. Attorney General, State of Alabama, Hugh L. White, Edgar Watkins, Special Solicitors and of Counsel, Attorneys for Plaintiffs.

Duly sworn to by J. H. Aldredge. Jurat omitted in printing.

EXHIBIT E TO AMENDMENT TO BILL OF COMPLAINT

AT A GENERAL SESSION OF THE INTERSTATE COMMERCE COMMISSION, HELD AT ITS OFFICE IN WASHINGTON, D. C., ON THE 22ND DAY OF DECEMBER, A. D. 1927

[fol. 225] No. 16336

In the Matter of Rates on Fertilizer and Fertilizer Materials, and Articles Taking the Same Rates, Intrastate Within the State of Alabama

First Supplemental Order

Upon further consideration of the matters and things involved in the above-entitled proceeding, and of the petitions of various short and weak-line carriers operating in the State of Alabama;

It is ordered, That the order entered herein on October 3, 1927, be, and the same is hereby, amended by adding to the carriers named in the third paragraph of said order the following named carriers, to wit:

Alabama and Northwestern Railroad.
Ashland Railway.
Alabama, Tennessee & Northern Railway Corporation.
Chattahoochee Valley Railway Company.
Mobile & Gulf Railroad Company.
The Tuskegee Railroad.
Alabama Central Railroad.
Alabama Central Railway.
Birmingham, Selma and Mobile Railroad.
Birmingham and Southeastern Railroad Company.
Mississippi and Alabama Railroad Company.
Sumter and Choctaw Railway Company.
Birmingham Southern Railroad Company.
Alabama, Florida & Gulf Railroad.
Atlanta & St. Andrews Bay Railway.
Gulf, Mobile & Northern Railroad Company.
Manistee & Repton Railroad.
The Muscle Shoals, Birmingham & Pensacola Railroad Company.
Tennessee, Alabama & Georgia Railway.

It is further ordered, That the effective date of said order of October 3, 1927, be, and the same is hereby, postponed to February 3, 1928, and that the rates published by the respondent carriers named in the next preceding paragraph hereof under the authority and direction of said [fol. 226] order of October 3, as hereby amended, shall be made effective on not less than five days' filing and posting in the manner prescribed in section 6 of the interstate commerce act.

It is further ordered, That in all other respects the said order of October 3 shall remain in full force and effect.

By the Commission.

George B. McGinty, Secretary. (Seal.)

Amendment allowed and filed by leave of Court. Notice to be given of its allowance and filing to counsel for Defendant and Intervenors.

Given, this January 20th, 1928.

W. I. Grubb, District Judge.

In United States District Court

[Title omitted]

Answer of Defendants to Petition as Amended—Filed February 6th, 1928

The joint and several answer of defendants, The Alabama Great Southern Railroad Company, Mobile & Ohio Railroad Company, Northern Alabama Railway Company, and Southern Railway Company to the petition in the above-styled cause, as amended by the amended petition filed herein by leave of Court under date of January 20, 1928

These defendants, for answer to said petition, as amended, adopt their answer to the original petition, which answer has already been filed and served.

For further answer to the amendments filed to said original petition, these defendants deny the allegation of the amendment to paragraph 7 which amendment undertakes to construe paragraph two of the order of the Interstate

Commerce Commission entered on October 14, 1924, in Docket No. 16336, a certified copy whereof is filed as Exhibit No. 5 with defendants' answer to the original petition [fol. 227] herein, and they say that said order speaks for itself as to the scope of the investigation therein and thereby ordered by the Interstate Commerce Commission, and they aver that said order was served, as required by its terms, upon all railroads operating within the State of Alabama, including not only the standard lines, but also the so-called short lines; all of which railroads were made parties to said proceeding by the very terms of said order duly served as aforesaid; and that all intrastate rates applicable between points in Alabama were brought under investigation and within the scope of said investigation by the very terms of said order of October 14, 1924.

For further answer to said amendment to paragraph 10 of the petition, defendants aver that a certified copy of said order of October 7, 1924, entered in Docket No. 16295, Fertilizer and Fertilizer Materials Between Southern Points, is filed as Exhibit No. 6 with the answer of these defendants to the original petition; and they deny the allegations of said amendment to said paragraph 10. They also deny that intrastate rates in the State of Alabama, on what are known as the short lines, were not specifically attacked or put in issue were not within the scope of the investigations ordered and held by the Interstate Commerce Commission in said consolidated proceedings under its orders entered, respectively, in Docket No. 16336 and Docket No. 16295; on the contrary, said intrastate rates were in issue and under investigation in said proceedings, and they aver that said short-line railroads did appear, by counsel and by witnesses, in said consolidated proceedings and did submit evidence, both oral and documentary, concerning the matters and things falling within the scope of said investigations and consolidated proceedings, including rates applicable from, to, and between points on their lines in the State of Alabama.

Answering the new paragraph added by said amended petition and designated therein as 20-a, these defendants admit the allegations thereof, except that they deny that said order of December 22, 1927, was made without further notice, and they aver that notice of the filing of

said petition and application was duly served upon petitioners, or their accredited representatives. They deny that any further hearing was necessary before the entering [fol. 228] of said order of December 22, 1927, a copy of which is filed as Exhibit E with said amendment to said original petition here.

They aver that said short-line railroads, and all railroads operating in the State of Alabama, were made parties to the investigation ordered in Docket No. 16336, by the very terms of the order of October 14, 1924, a copy whereof is filed as Exhibit No. 5 with defendants' answer to the original petition, and that the scope of said investigation therein ordered was wide enough to include, and did include, all intrastate rates applicable on fertilizer and fertilizer materials in Alabama.

They likewise aver that said short-line railroads named in said paragraph 20-a of said amendment to said petition were made parties to the order of October 7, 1924, entered in Docket No. 16295, Fertilizer and Fertilizer Materials between Southern Points, a copy of which order is filed as Exhibit No. 6 with the answer of these defendants to the original petition here, and that rates between points on the lines of said additional defendants, as well as between points on their lines and on lines of the standard railroads, were specifically brought within the scope of said general investigation.

They aver that evidence was submitted in said consolidated proceedings concerning the rates of said additional defendants applicable intrastate in Alabama, as well as for interstate application from, to, and between points on their respective lines of railroad; that the proposals of the so-called short-line railroads, including the additional defendants brought in by said amended petition, were considered by the Interstate Commerce Commission in said consolidated proceedings, including particularly the intrastate rates in Alabama, and that in its said report in said consolidated proceedings, dated July 19, 1926, 113 I. C. C., 389, the Interstate Commerce Commission discussed the proposals of the short lines concerning the basis for interstate rates on fertilizer from, to, and between points on those lines, as well as the intrastate rates then in effect, the basis therefor, and the proposals as to rates for the future, and likewise dealt with the proposal of the shippers

which advocated the adoption of the Alabama adjustment to govern the intrastate rates in Alabama, as well as the [fol. 229] interstate rates from, to, and between points on said short lines. After having reviewed the evidence submitted in regard to the rates for application from, to, and between points on said so-called short lines listed in Appendix D to said report, 113 I. C. C., 389, the Commission prescribed the basis to govern the rates applicable to the transportation of fertilizers and fertilizer materials, in carloads, from, to, and between points on said short or weak lines, and made the following definite finding in regard thereto, in its said report, 113 I. C. C., at page 425:

"We further find that the rates applicable to the interstate transportation, in carloads, of the aforesaid mixed fertilizers and fertilizer materials throughout said territory over routes made up, in whole or in part, of any of the short or weak lines described below are, and for the future will be, unreasonable to the extent that they exceed rates per net ton based on the distance scale shown in the table above plus an arbitrary of not to exceed 50 cents per net ton, subject to the minimum carload weights found reasonable below, such arbitrary to accrue solely to the participating short or weak line or lines. The short and weak lines covered by this finding are the carriers listed in Appendix D hereto, other than those that are under common control or management with some standard carrier, and also include the Columbus & Greenville, the Kinston Carolina, the Carolina Railroad, the Gulf, Mobile & Northern, the Birmingham & Northwestern, and the Atlanta, Birmingham & Atlantic, so long as they remain independent of standard-line control."

In its order accompanying said report it provided for and required the application of the rates which it had found to be reasonable for application from, to, and between points on said short lines, all of which will more fully appear from said report and order in said Docket No. 16295, a certified copy whereof is filed as Exhibit No. 1 with the answer of these defendants to the original petition here, in which report the Interstate Commerce Commission likewise made definite findings with regard to the intrastate

rates in Alabama and the discrimination created by the maintenance of intrastate rates in Alabama on a lower basis than the corresponding rates therein found reasonable for the interstate transportation of fertilizers and fertilizer [fol. 230] materials, such lower intrastate rates having been found by the Interstate Commerce Commission to constitute the unjust discrimination against, and burden upon, interstate commerce, and the undue prejudice to persons and localities in interstate commerce forbidden and declared to be unlawful by the Interstate Commerce Act, as amended.

Subsequent to the rendition of said report and order in Docket No. 16295, the General Fertilizer Investigation, all of the standard lines in Alabama, acting through their duly accredited representatives, and the so-called short lines, acting through J. A. Streyer, their representative, petitioned the Alabama Public Service Commission to make effective intrastate in Alabama the same rates as had been prescribed by the Interstate Commerce Commission in the proceedings aforesaid and published and made effective on fertilizer and fertilizer materials throughout Southern territory on the standard lines, and the higher basis prescribed and likewise published and made effective on the short lines, in obedience to the mandate of the orders aforesaid of the Interstate Commerce Commission. The said application was denied by the Alabama Public Service Commission, by its report and order dated July 18, 1927. Thereupon, by petition dated on or about September 1, 1927, the standard roads in Alabama, as well as the short-line railroads, brought to the attention of the Interstate Commerce Commission, through a petition duly filed, the fact that the Alabama Public Service Commission, by its said report and order of July 18, 1927, had declined to carry out the recommendations made in the report of the Interstate Commerce Commission in Docket No. 16295, 113 I. C. C., 389, and to make effective intrastate in Alabama the same rates as had been prescribed therein by the Interstate Commerce Commission for interstate application.

Defendants deny that any further hearing was necessary on said petition or prior to the issuance by the Interstate Commerce Commission of its order of October 3, 1927, in as much as the most elaborate hearings had already taken place

in said General Investigation, Docket 16295, and in said proceedings heard therewith, known as Docket No. 16336, in which consolidated proceedings petitioners here had participated throughout and had therein urged the adoption of the [fol. 231] scale promulgated by said Alabama Public Service Commission and later adhered to by it, as well as the adoption of the basis prescribed by said Alabama Commission for rates of said so-called short-line railroads operating in Alabama.

The Interstate Commerce Commission, after having considered all of the evidence offered by petitioners here, as well as all other parties in interest, including the representatives of said short-line railroads, in said consolidated proceedings, made and entered its report and orders aforesaid, including the orders here attacked and sought to be set aside, and fixed the basis and level of rates thereafter to be observed not only by the standard lines, but the short lines as well for application throughout Southern territory.

Having by its said reports and orders fixed the interstate rates for application not only on the standard lines, but the higher basis to govern the rates of the short lines as well, and having made findings which condemned the Alabama intrastate rates, as well as the other findings set forth in its report in regard to those rates, and having overruled the contentions of the Alabama Public Service Commission which sought to have its basis of rates adopted for application throughout Southern territory, it was only necessary for said Interstate Commerce Commission to make its said order of October 3, 1927, as amended by its said order of December 22, 1927, which orders in turn merely required to be put into effect in Alabama, for intrastate application between points in that State, on the standard lines as well as on the so-called short lines, the respective bases and levels of rates on fertilizer and fertilizer materials, which the Interstate Commerce Commission had prescribed for interstate application upon standard lines and the so-called short lines, respectively, so as to harmonize and to make the rates applicable between points in Alabama conform to the basis and level which the Interstate Commerce Commission had promulgated and prescribed for application throughout Southern territory on the two sets of lines,

namely, the standard lines and the so-called short lines, respectively.

Answering the amended paragraphs numbered 23 and 24, as said amendments are set forth in said petition, these [fol. 232] defendants, on information and belief, aver that the defendants made parties to this proceeding by said amended petition are proceeding to file tariffs in accordance with the mandate and requirements of the order of the Interstate Commerce Commission dated October 3, 1927, as amended by its later order of December 22, 1927, in said Docket No. 16336, and that said short-line railroads have already published interstate rates from, to, and between points on their respective lines of railroad and/or other lines of railroad participating in interstate commerce, to comply with the report and order of the Interstate Commerce Commission in said Docket No. 16295, and upon the basis therein prescribed for said so-called short lines.

For answer to said new paragraph sought to be added to the original petition by said amendment, and numbered therein as 26-a, these defendants deny the allegations thereof, except the names of the new defendants listed on page 3 of said amended petition, which are sought to be made parties defendant thereby.

These defendants specifically deny the allegation that there was no petition filed by said short-line railroads before the Interstate Commerce Commission seeking the relief accorded them. These defendants deny that said short lines were omitted from and were not included in the investigation ordered by the Interstate Commerce Commission in said Docket No. 16336, concerning Alabama rates, and on the contrary they aver that said short-line railroads were made parties to said proceeding by the very terms of said order inaugurating the investigation in said Docket No. 16336.

They deny that said short-line railroads were not parties to said general investigation of fertilizer rates, Docket No. 16295, but, on the contrary, they aver that said short-line railroads were made parties to said proceeding, and they further aver that said two dockets were heard together, along with other cases shown to have been consolidated, heard, and decided with said General Investigation by

the report of the Interstate Commerce Commission, 113 I. C. C., 389; that said short-line railroads, as well as petitioners here, were heard at length, were accorded full opportunity to submit evidence, and did submit evidence, in said consolidated proceedings concerning the rates involved, [fol. 233] including the intrastate rates in the State of Alabama; that said parties were likewise heard on brief and in oral argument prior to the making and entering and serving by the Interstate Commerce Commission of its said report of July 19, 1926, 113 I. C. C., 389, and its subsequent supplemental reports and prior to the making, entering, and serving of its order of October 3, 1927, as amended by said order of December 22, 1927.

These defendants further aver that the Interstate Commerce Commission accorded to all parties to said consolidated proceedings, including the petitioners here, and said additional defendants sought to be brought in and made parties hereto by said amendment to said bill, at hearings in said consolidated proceedings before said Interstate Commerce Commission, full and fair opportunity to be heard upon all subject matters here drawn in question; that at said hearings a large amount of oral testimony and other evidence bearing upon said matters was submitted to the Interstate Commerce Commission for consideration on behalf of said parties, including the petitioners here; that at said hearings and subsequently, both orally and in briefs filed in said proceedings, questions relating to said matters, and particularly to the rates of the said so-called short lines, from, to, and between points on those lines of railroad, were fully presented, argued, and submitted to the Interstate Commerce Commission for determination on behalf of said parties by their respective counsel; whereupon the Commission determined all such matters and made and entered its said original report and order, 113 I. C. C., 389, and its supplemental reports and orders, copies whereof are filed as exhibits with the answer of these defendants here, as well as its said order of October 3, 1927, as amended by its said order of December 22, 1927, which reports and orders included the Commission's decision, conclusions, orders, and requirements in the premises.

These defendants further aver that said findings, conclusions, orders, and requirements, and the terms and conditions thereof, including especially its said order of Oc-

tober 3, 1927, as amended by said order of December 22, 1927, were and are fully supported by the evidence submitted to the Commission in said proceeding, as aforesaid; and these defendants deny each and all and every one of the [fol. 234] allegations to the contrary contained in said original petition, or in said amended petition.

Answering the amendment to paragraph 27, as sought to be made in said amended petition by adding a new sub-paragraph to be designated as "(e-1)," these defendants deny the allegations of said new sub-paragraph to said paragraph 27.

Defendants, further answering, deny the allegations of the amendment sought to be made to said sub-paragraph (m) of paragraph 27, and deny the allegations of said paragraph 27(m), as amended by said amended petition. Defendants specifically deny the allegations of said amendments designated as sub-paragraph "e-1" and sub-paragraph (n), as amended, to said paragraph 27 of said petition, to the effect that said Interstate Commerce Commission, in its opinion, findings, or in its order and judgment, acted either arbitrarily or contrary to law, or contrary to the evidence, or that it made findings or reached conclusions or entered orders without notice to the parties affected, or without any evidence to support the same.

Defendants specifically deny that said reports, opinions, findings, conclusions, judgments and orders made by said Interstate Commerce Commission are invalid or arbitrary, or that they exceed its power and authority in any respect or to any extent; and they specifically deny each and all of the allegations set forth in said paragraph numbered 27 of said petition, or any of the sub-divisions thereof, as amended.

Defendants reiterate the allegations of their answer to said original petition and rely upon said answer as filed to said original petition, as well as to said amended petition, and on the additional and supplemental answer hereinbefore made, as their answer to said amended petition.

Wherefore, having fully answered, defendants pray that the original petition, as amended, be dismissed at the cost

[fol. 235] of petitioners, and for such other and further order as may be appropriate or necessary in the premises.

The Alabama Great Southern Railroad Company, Mobile & Ohio Railroad Company, Northern Alabama Railway Company, Southern Railway Company, by R. E. Steiner, S. P. Smith, Charles J. Rixey, Their Solicitors.

Duly sworn to by E. R. Gardner. Jurat omitted in printing.

[fol. 235-a] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF LOUISVILLE & NASHVILLE R. R. Co. et al.—Filed January 21, 1928

The joint and several answer of defendants, the Louisville & Nashville Railroad Company, Atlantic Coast Line Railroad Company, Seaboard Air Line Railway Company, Central of Georgia Company, Nashville, Chattanooga & St. Louis Railway, St. Louis-San Francisco Railway Company, Illinois Central Railroad Company, The Western Railway of Alabama, Atlanta, Birmingham & Crest Railroad Company, successor to Atlanta, Birmingham & Atlantic Railway Company (B. L. Bugg, Receiver)

Now come the above named defendants, who are common carriers by railroad, by their Solicitors, and for answer to the matters and things set forth in the petition filed in the above entitled cause against them as defendants, answering jointly and severally, say:

I

These defendants, Louisville & Nashville Railroad Company; Atlantic Coast Line Railroad Company; Seaboard Air Line Railway Company; Central of Georgia Railway Company; Nashville, Chattanooga & St. Louis Railway; St. Louis-San Francisco Railway Company; Illinois Central Railroad Company; The Western Railway of Alabama; Atlanta, Birmingham & Coast Railroad Company, successor to Atlanta, Birmingham & Atlantic Railway Company (B.

L. Bugg, Receiver), jointly and severally adopt the answer filed in this cause by the Alabama Great Southern Railroad Company, Mobile & Ohio Railroad Company; Northern
[fol. 235-b] Alabama Railway Company and Southern Railway Company, and make said answer the answer of these defendants in every respect as if their names were signed by counsel to said answer, except as hereinafter stated.

II

Further answering Paragraph 17 of the Petition filed in this cause, and specifically that part of said paragraph referring to permitting the Nashville, Chattanooga & St. Louis Railway to deviate from the mileage, employing a constructive mileage of fifty (50) miles for a car-float of twenty (20) miles on the Tennessee River in Alabama, these defendants say that the Interstate Commerce Commission, by its order in Docket No. 16295, "Fertilizer and Fertilizer Materials Between Southern Points", and more specifically recorded in 123 I. C. C. Reports, on Page 194 and 195, justified said order as follows:

"The Nashville, Chattanooga & St. Louis also petitions for authority to use 50 miles as the constructive mileage in determining rates over its route via Hobb's Island and Gunters Landing, Ala. On its Huntsville branch this carrier operates a car-float transfer of 20 miles long and across the Tennessee River between the points named, and in the Southern Class Rate Investigation, 100 I. C. C. 513, a constructive distance of 50 miles was authorized to be used between these points in determining distances and rates over this route. This carrier now seeks similar authority in this proceeding. The only reference made to this matter in the record is where, after mentioning the situation, the witness of the carrier was asked, "Do you propose to apply straight mileage on that branch, or are you going to have constructive mileage for the river crossing?" To which he replied, "It depends upon what we get from 13494 (Southern Class Rate Investigation). The present proposal is straight mileage scale."

This petition has also been submitted to the parties of record, and no objection has been offered by any one. On the strength, therefore, of what was done in the Southern Class Rate Investigation, supra, there appearing to be no

reason why the same exception should not be made in this case, we find that the Nashville, Chattanooga, & St. Louis may use 50 miles as the constructive distance for the cross- [fols. 235-c & 235-d] ing referred to."

III

Further answering Paragraphs 21 and 24 of the petition, these defendants say, aver and plead to the allegations contained in said Paragraph 21 to the effect:

"The defendants continue to maintain intrastate rates within the State of Mississippi lower than the said intrastate rates established by the Alabama Public Service Commission."

and in said Paragraph 24 to the effect:

"Such tariffs contain Note 5, which specifically makes them inapplicable in intrastate traffic in Florida, Louisiana, Mississippi, North Carolina and South Carolina, and Virginia."

That the mandate of the order of the Interstate Commerce Commission in regard to Alabama intrastate rates can not be avoided, nor can said order or the action taken in regard to intrastate rates in Alabama be challenged or attacked by reason of the present status of the intrastate rates in any of the states above mentioned, and further that said attempt to attack the action of the Interstate Commerce Commission, so far as it applies to intrastate rates in Alabama, by referring to the situation or status of the rates in the above states mentioned, is immaterial and irrelevant.

Wherefore, having fully answered, these defendants pray that the petition be dismissed at the cost of petitioners, and for such other and further orders as may be appropriate or necessary in the premises.

William C. Burger, Steiner, Crum & Weil, Attorneys for Defendants.

Duly sworn to by William C. Burger, Jurat omitted in printing.

[fol. 235-e] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF LOUISVILLE & NASHVILLE R. R. CO., ET AL., TO BILL OF COMPLAINT AS AMENDED—Filed February 7th, 1928

The joint and several answers of defendants, the Louisville & Nashville Railroad Company; Atlantic Coast Line Railroad Company; Seaboard Air Line Railway Company; Central of Georgia Railway Company; Nashville, Chattanooga & St. Louis Railway; St. Louis-San Francisco Railway Company; Illinois Central Railroad Company; The Western Railway of Alabama; Atlanta, Birmingham & Coast Railroad Company, successor to Atlanta, Birmingham & Atlantic Railway Company (B. L. Bugg, Receiver).

Now come the above named defendants, who are common carriers by railroad, by their Solicitors, and for answer to the matters and things set forth in the petition as amended filed in the above entitled cause against them as defendants, answering jointly and severally, say:

I

These defendants, Louisville & Nashville Railroad Company; Atlantic Coast Line Railroad Company; Seaboard Air Line Railway Company; Central of Georgia Railway Company; Nashville, Chattanooga & St. Louis Railway; St. Louis-San Francisco Railway Company; Illinois Central Railroad Company; The Western Railway of Alabama; At-
[fol. 236] lanta, Birmingham & Coast Railroad Company, successor to Atlanta, Birmingham & Atlantic Railway Company (B. L. Bugg, Receiver), jointly and severally adopt the answer filed in this cause by the Alabama Great Southern Railroad Company; Mobile & Ohio Railroad Company; Northern Alabama Railway Company and Southern Railway Company to the petition as amended, and make said answer the answer of these defendants in every respect as if their names were signed by counsel to said answer.

Wherefore, having duly answered these defendants pray that the petition be dismissed at the cost of petitioners,

and for such other and further orders as may be appropriate or necessary in the premises.

Louisville & Nashville Railroad Company, Atlantic Coast Line Railroad Company, Seaboard Air Line Railroad Company, Central of Georgia Railway Company, Nashville, Chattanooga & St. Louis Railway, St. Louis-San Francisco Railway Company, Illinois Central Railroad Company, The Western Railway of Alabama, Atlanta, Birmingham & Coast Railroad Company, successor to Atlanta, Birmingham & Atlantic Railway Company (B. L. Bugg, Receiver), by R. E. Steiner, W. C. Burger, Attorneys for Defendants.

Duly sworn to by R. E. Steiner. Jurat omitted in printing.

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DENYING APPLICATION FOR INTERLOCUTORY INJUNCTION—Filed February 14th, 1928

This cause coming on to be heard before a Statutory Court, composed of Two Circuit Judges and a District Judge, upon the application of the plaintiffs for an interlocutory injunction, suspending and restraining the enforcement, operation, and execution of certain orders entered by the Interstate Commerce Commission in a proceeding known [fol. 237] as "Fertilizers and Fertilizer Materials between Southern Points," in so far as said orders affect intrastate rates within the State of Alabama; and enjoining the defendant carriers, until final hearing, from collecting the rates prescribed in the tariffs affecting rates on transportation wholly within said State, claimed to have been filed in conformity with said orders of the Interstate Commerce Commission and from collecting other and different rates than those prescribed for intrastate application by the Alabama Public Service Commission in the State of Alabama; and having been submitted upon the original sworn Bill of Complaint, the sworn amendment to the Bill of Complaint, together with the exhibits attached to each; the

sworn answers of the defendants to the original Bill of Complaint, and to the amendment thereto, and the exhibits to such answers; also upon the record of the proceedings had and of the evidence introduced before the Interstate Commerce Commission in the consolidated proceedings in which the orders sought to be enjoined were made by it, together with the reports and orders of the said Interstate Commerce Commission, and also upon other documentary evidence; and having been fully argued, and the Court having fully considered the application and being of the opinion that the plaintiffs were accorded a full and fair hearing before the Interstate Commerce Commission upon all the issues determined by the Interstate Commerce Commission in its reports and in the orders complained of herein; and the Court being of the opinion that all the findings of the Interstate Commerce Commission, contained in its said reports and orders, were within the issues presented by the pleadings, including the finding that the rates on fertilizers and fertilizer materials, fixed by the plaintiff, the Alabama Public Service Commission, by its order of May 26th, 1924, effective July 25th, 1924, between points in the State of Alabama, unjustly discriminated against interstate commerce in said traffic between points in southern territory under the interstate rates fixed by the Interstate Commerce Commission said proceedings before it as reasonable and made effective by the orders herein complained of; and the Court being of the opinion that the record of the proceedings before the Interstate Commerce Commission shows that the finding of the Interstate Commerce [fol. 238] Commission that the said rates between points in the State of Alabama fixed by the plaintiff, the Alabama Public Service Commission, as above stated, unduly and unreasonably discriminate against interstate commerce in its entirety, under the interstate rates fixed by the Interstate Commerce Commission, as aforesaid, for fertilizers and fertilizer materials between points in southern territory and operate as an undue and unreasonable preference in favor of such intrastate commerce between points within the State of Alabama as against such traffic in interstate commerce between points in southern territory under the rates as fixed by the Interstate Commerce Commission for such traffic in said proceedings before it, and constitute an unreasonable discrimination against interstate commerce,

as a whole, was supported by substantial evidence; and that the finding of the Interstate Commerce Commission that one schedule of rates for such traffic, whether moving over a single line of railroad, or a number of lines jointly, was advisable, was, as shown by the record of said proceedings before the Interstate Commerce Commission, supported by substantial evidence and so was within the competency and discretion of the Interstate Commerce Commission to adopt.

It is ordered, adjudged and decreed that the application of the plaintiffs for the issuance of an interlocutory injunction, as prayed for in their Bill of Complaint, as amended, be and it is hereby denied.

Given this 13th day of February, 1928.

R. W. Walker, Circuit Judge. Rufus E. Foster, Circuit Judge. W. I. Grubb, District Judge.

[fol. 239] In United States District Court, Northern District of Alabama, Southern Division

In Equity. No. 613

State of Alabama and Alabama Public Service Commission, Petitioners,

v.

United States, Interstate Commerce Commission, et al., Defendants

Decree Dismissing Bill of Complaint—Filed June 25, 1930

This cause came on for final hearing before the undersigned, and was argued by counsel.

Upon consideration of the pleadings and evidence, it is ordered, for reasons to be stated in an opinion hereafter to be filed, that the relief prayed for be denied, and that the bill of complaint be dismissed.

June 24th, 1930.

N. P. Bryan, United States Circuit Judge. Wayne G. Borah, United States District Judge. Samuel H. Sibley, United States District Judge.

[fol. 240] IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION

In Equity. No. 613

STATE OF ALABAMA and ALABAMA PUBLIC SERVICE COMMISSION, Plaintiffs,

vs.

UNITED STATES, INTERSTATE COMMERCE COMMISSION, et al., Defendants

OPINION—Filed July 2, 1930.

Before Bryan, Circuit Judge; Sibley and Borah, District Judges

SIBLEY, District Judge:

The State of Alabama and the Alabama Public Service Commission brought suit to set aside and enjoin an order of the Interstate Commerce Commission dated October 3rd, 1927, modified December 22nd, 1927, whereby it was required that intrastate rates on fertilizers and fertilizer materials in Alabama should not be less for corresponding distances than those contemporaneously applied in interstate commerce as established under a previous order of the Commission of July 19th, 1926. The application for a preliminary injunction was heard before three judges and the injunction denied. This judgment was affirmed by the Supreme Court as involving no abuse of discretion, Alabama v. United States, 279 U. S. 229. The case has now been heard for final decree before three other judges, the original ones being all unable to act because of sickness or absence. The evidence is precisely the same as that dealt with on the preliminary hearing. We agree with each of the rulings made in the judgment refusing the preliminary injunction, which are, in general, to the effect that the plaintiffs had a full hearing before the Interstate Commerce Commission, that sufficient evidence supports the Commission's findings, that the Alabama State rates, which were, in general, lower than those then prescribed for interstate commerce into and out of Alabama, would in future result in unjust discrimination against interstate

commerce and in undue prejudice to persons and localities in interstate commerce, and that the state rates should, for remedy, be raised to conform; and that the establishment as a minimum for state rates of the interstate rates then in effect which permitted no differential for joint route hauls, was within the power of the Commission.

On May 26th, 1924, the Alabama Public Service Com- [fol. 240-a] mission set up a scale of fertilizer and fertilizer material rates which differentiated between single line and joint route hauls and were purposely made low in order to encourage agriculture. In October of that year the Interstate Commerce Commission instituted an inquiry into interstate rates on these commodities throughout the Southern Territory, and consolidated into it an inquiry started by the carriers respecting the Alabama state rates. In this latter the Commission, by its order, stated that it would inquire "whether the Alabama rates cause or will cause any undue or unreasonable advantage, preference or prejudice between persons and localities in intrastate commerce on the one hand and in interstate and foreign commerce on the other; or any undue, unreasonable and unjust discrimination against interstate and foreign commerce; and what rates, maximum or minimum, or maximum and minimum, shall be prescribed to remove the same if found to exist." This was a paraphrase of Sect. 13 (4) of the Commerce Act, though the section was not mentioned. The State of Alabama and its Public Service Commission were served as required by the section, and participated in the hearings. The Interstate rates were found to be varying and inconsistent, and as a maximum for interstate commerce a distance scale was prescribed, without differential for joint hauls, by the order of July 19th, 1926. A specific formal finding was then made that the Alabama intrastate rates, being on a lower basis then the corresponding interstate rates then prescribed, would work undue discrimination against interstate commerce, and undue prejudice to persons and localities involved therein. But no order for conformity was then entered because of the expressed expectation that this and other Commissions would voluntarily revise their rates. The Alabama Commission did not alter its rates and on motion and notice the matter was reopened by the Interstate Com-

merce Commission and the order now complained of was, without further evidence or hearing, entered. The complaint by the carriers against the Alabama rates was expressly made under Section 13 of the Commerce Act, and authorized by it, though no express reference was made to the section in the Commission's order. The law needs no more to be pleaded in proceedings by or before the Commission than before a court. C. R. I. & Pacific Rwy. Co., vs. United States, 274, U. S. 29. What was proposed to be done was plainly and fully stated in the order and all that has been done was within the proposals. The consolidation of the Alabama proceeding with the general interstate rate investigation made the State and its Commission a party to the latter, but did not alter the purpose or effect of the former. It is true the establishment of new interstate rates affected the question of discrimination [fol. 240-b] by the Alabama rates, but did not alter its general substance or require a de novo hearing. The findings against the Alabama rates was like a verdict with judgment not immediately pronounced. No additional hearing was necessary in order that the judgment might be later entered. There appears no want of full hearing in reaching the order thus finally made. Georgia Public Service Commission v. United States, 39 F (2) 167.

While some of the Alabama rates did not, perhaps, differ sufficiently from the interstate rates established to make a substantial burden on or discrimination against interstate commerce, others of them, considering the volume of this traffic and the close competition in it, did so. These rates were closely related to one another as a system. In determining how the discrimination and burden that was found to exist should be removed, the Commission could decide whether it was sufficient to alter only some of the rates, or necessary to alter the system. We do not think the decision to do the latter was arbitrary and unreasonable.

The dropping from the interstate scale, and by consequence from the State rates, of the differential in favor of joint hauls is attacked as arbitrary and inconsistent with the retention of it in the rates on crushed stone, sand, and gravel, which we have upheld in the companion case to this of Ga. Public Service Commission v. United States, ——. Whether this differential should be retained on

fertilizers and fertilizer materials was fully discussed in the hearings in this case before the Commission. From common knowledge it is apparent that as between a single line haul of a car of freight and a joint line haul for the same distance, there is some additional cost in the latter, because more clerical work in rebilling, more accounting in dividing the freight charge, and an additional switching movement, with probable consequent delay of the car, are all involved. But whether the additional compensation for this is worth the trouble of dealing with it from a carrier's standpoint or whether the movement of business will be embarrassed by it from the shipper's standpoint are matters for the exercise of informed judgment. The Commission decided that in the case of crushed stone and gravel, the rate itself being of the lowest, that the differential was a substantial part of the carrier's pay and should be maintained. In the case of fertilizers the rate is about two and a half times as great, and the additional cost of handling the car a less substantial proportion of it. The differential had already been abandoned in the higher classes of freight, Southern Class Rates 100 I. C. C. 627, 628, and compensated on the average by slightly increased rates. We cannot say it is arbitrary to decide that this is the proper course to pursue in reference to fertilizers, which occupy an intermediate place.

[fol. 240-c] We therefore think the order within the power of the Commission and supported by evidence, and that it should not be set aside.

This June 25th, 1930.

[fol. 241] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL TO SUPREME COURT AND ORDER GRANTING APPEAL—Filed August 22, 1930

Petition for Appeal to Supreme Court

The petition of the State of Alabama and the Alabama Public Service Commission, plaintiffs in the foregoing proceedings, respectfully represents that petitioners are ag-

grieved by the judgment and decree rendered herein on June 24, 1930, and that the petitioners for the reasons specified in the assignment of errors filed herewith desire to appeal therefrom to the Supreme Court of the United States.

Wherefore petitioners pray that the said appeal may be allowed and made returnable to the Supreme Court of the United States according to law and that a transcript of the records, proceedings, papers and exhibits upon which said decree was rendered, duly authenticated, be sent to the said the Supreme Court.

This 18th day of August, 1930.

Charlie C. McCall, Attorney-General; Hugh White, J. W. Brassell, Edgar Watkins, Attorneys for Plaintiffs.

Order Granting Appeal

Considering the foregoing petition this day presented, it is ordered that an appeal be allowed to the State of Alabama and Alabama Public Service Commission, petitioners herein and plaintiffs in the above described suit, from the order and decree of June 24, 1930, returnable to the Supreme Court of the United States; ordered that a certified transcript of the record, including the exhibits to the pleadings, except Exhibit A to the original petition herein, be filed in [fol. 241-a] the Supreme Court of the United States according to law, as prayed, upon plaintiffs giving bond for costs in the sum of One thousand ($1000.00) Dollars, which bond, filed herewith, is approved.

This 21st day of August, 1930.

N. P. Bryan, U. S. Circuit Judge. Wayne G. Borah, United States Judge, sitting, under order of designation, in the Northern District of Alabama. Samuel H. Sibley, United States Judge.

[fol. 242] In United States District Court

[Title omitted]

Assignment of Errors—Filed August 22, 1930

Now come the State of Alabama and Alabama Public Service Commission, the plaintiffs in the above entitled

cause, and file the following assignment of errors upon which they will rely upon their prosecution of their appeal in the above entitled cause from the order and decree made by a court of three judges in this Honorable Court on the 24th day of June, 1930, in that the court erred in the following particulars, to-wit:

1. In not concluding and decreeing that there was no adequate findings by and no substantial evidence before the Interstate Commerce Commission authorizing or justifying that Commission in regulating and prescribing intrastate rates on fertilizers and fertilizer materials within the State of Alabama and in not enjoining the orders of such Commission sought to be enjoined and annulled in this cause.

2. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein, for the reason that such orders were rendered by such Commission in violation of the Commerce Clause, paragraph 3, section 8 of Article I of the Constitution of the United States.

3. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein, for the reason that such orders were rendered by such Commission in violation of paragraph 2, subparagraph a of Section 1 of the Interstate Commerce Act.

4. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein because there was no substantial evidence before the Interstate Commerce Commission that the rates on fertilizers [fol. 242-a] and fertilizer materials within the State of Alabama violated Section 3 of the Acts to Regulate Commerce when such rates are compared with the scale of rates fixed by the Interstate Commerce Commission in its opinion of July 19, 1926.

5. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein for the reason that such orders condemned intrastate rates in Alabama in comparison with rates fixed by the Interstate Commerce Commission in a report dated July 19, 1926, when as to such rates so fixed there had never been

any hearing concerning their relationship to the rates intrastate in Alabama.

6. In not enjoining and annulling the order of the Interstate Commerce Commission sought to be enjoined here because the orders of such Commission making effective the rates found reasonable in its opinion of July 19, 1926 intrastate in Alabama were in violation of the fifth amendment to the Constitution of the United States and of the acts of Congress in that plaintiffs were deprived of due process of law and of a full hearing.

7. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein, which orders prescribed one class of rates applicable both to single line and joint line hauls for the reason that the issues and testimony presented to the Commission in the cause in which such orders were entered related solely to the establishment of two classes of rates, one applicable to a single carrier and one applicable to two or more carriers joining in the same haul, such orders of the Commission being without evidence to support them and being entered in violation of the fifth amendment to the Constitution of the United States and the laws of the United States which give petitioners a full hearing and due process of law.

8. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein for the reason that such orders in effect require the fixation intrastate in Alabama of rates that are both maximum and minimum rates while permitting the carriers to regard the interstate rates as but maximum rates.

9. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein, for the reason that such orders were made applicable to domestic rates only; when, without a consideration of import rates, it is impossible to know whether a particular rate intrastate discriminates against any interstate rate.

[fol. 242-b] 10. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein for the reason that such orders are general

and applicable throughout the State, when there is no evidence as to the larger number of intrastate rates in Alabama.

11. In not enjoining and annulling the orders sought to be enjoined for the reason that some of the intrastate rates superseded by such orders were higher than the interstate rates.

12. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein, because the fact that there is a difference in the level of some rates interstate and intrastate gives no power or right to the Interstate Commerce Commission to regulate all the intrastate rates by changing them to the same level as the interstate rates there being no evidence of a burden on interstate commerce as to the larger portion of the intrastate rates.

13. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein because such orders are made applicable to short line railroads when as to such railroads there was no evidence whatsoever as to the specific earnings of each road nor as to the relationship of the transportation over such railroads to transportation over interstate roads.

14. Because the court erred in not, under the undisputed facts of this case, granting petitioners a permanent injunction enjoining the enforcement of the orders sought to be enjoined herein.

15. Because the court erred in admitting and considering the excerpts from the motion for rehearing of the Alabama Public Service Commission.

For which errors the plaintiffs, State of Alabama and Alabama Public Service Commission, pray that the said judgment of the three-judge court sitting in the Northern District of Alabama, dated the 24th day of June, 1930, in the above entitled cause, be reversed and a judgment entered in favor of said plaintiff and for costs.

Charlie C. McCall, Hugh White, J. W. Brassell, Edgar Watkins, Counsel for Plaintiffs in Error.

[fol. 243] Bond on appeal for $1,000, approved and filed August 22, 1930, omitted in printing.

[fol. 243-a] Citation in usual form showing service on Elmer B. Collins et al., filed August 22, 1930, omitted in printing.

[fol. 244] In United States District Court

[Title omitted]

Stipulation re Transcript of Record and Order Thereon —Filed August 22, 1930

On the final hearing of the application for injunction the plaintiffs have offered in evidence a certified full copy of the transcript of the record of the evidence and proceedings before the Interstate Commerce Commission in the proceeding entitled "Fertilizers and Fertilizer Materials between Southern Points" No. 16295, and other proceedings consolidated and heard therewith upon one record, including Docket No. 16336, entitled "In the Matter of Rates on Fertilizer and Fertilizer Materials and Articles Taking the Same Rates Intrastate within the State of Alabama," consisting of a total of approximately 1469 pages of the oral testimony of the witnesses and approximately 500 exhibits and the same having been received in evidence by the Court; and the plaintiffs having seasonably filed and served with their notice of appeal a condensed narrative of such portions of the transcript of the evidence and proceedings as the plaintiffs deem material and necessary for the determination of the appeal; and the defendants and intervenor denying that such condensed narrative contains all of the testimony and evidence that is or may be necessary or material for the determination of the appeal and having in writing seasonably filed objections thereto; and the defendants and intervenor having prepared and seasonably presented and served a statement or narrative (in three sections) of all of the oral testimony of the witnesses; and now for the purpose of reducing and settling the record of appeal pursuant to Equity Rule No. 75, the parties by their respective counsel (and with the approval of the Court) stipulate:

(1) The within and attached narrative (in three sections) is a true and correct transcript in narrative form of

all of the oral testimony introduced at the hearings before the Commission as the same is contained in the official typewritten transcript in the proceedings referred to.

[fol. 244-a] 2. The narrative shall be substituted for the original transcript of the oral testimony so certified by the Commission, shall be incorporated in the record on appeal and shall have the same force and effect upon the appeal as the original testimony.

(3) The exhibits in the certified copy of the transcript, numbered from 1 to 500, inclusive, shall stand as original exhibits and with the narrative shall be incorporated in the record on appeal in lieu of the full certified transcript, with the exception of the following exhibits which need not be included in the transcript on the appeal, viz:

No. 30 (Menzies), 4 pages, excerpts from reports of the Interstate Commerce Commission.

No. 34 (Gardner), 4 pages, article from Manufacturers Record, "Story of the Origin and Development of the Fertilizer Industry," by Charles A. Whittle, Secretary, Soil Improvement Committee.

No. 36 (Gardner), bulletin No. 1280, United States Department of Agriculture, October, 1924.

No. 37 (Gardner), report on Fertilizer Industry, Federal Trade Commission, August 19, 1926.

No. 38 (Gardner), report on Fertilizer Industry, Federal Trade Commission, March 3, 1923.

Nos. 102 and 103 (Gardner), excerpts from reports of Interstate Commerce Commission.

No. 109 (Gardner), 1 page, excerpts from proposed report of Examiner Disque in Consolidated Southwestern Cases.

No. 131 (Gardner), excerpts from reports of Interstate Commerce Commission.

Nos. 140 and 141 (Sheppard), excerpts from reports of Interstate Commerce Commission.

Nos. 216 and 217 (Ketner), 5 pages, excerpts from reports of Interstate Commerce Commission.

No. 323 (Davis), 69 pages, bulletin "Results of Fertilizer

Experiments", North Carolina Department of Agriculture, September, 1924.

No. 446 (Burke), 9 pages, excerpts from reports of Interstate Commerce Commission.

No. 468 (Orr), 5 pages, Income from Agricultural Pro-
[fol. 244-b] duction in United States, 1919-1924, published by United States Department of Agriculture.

No. 469 (Orr), 1 page, index number of farm prices 1920-1923, and monthly, January, 1923-July, 1924, by group of commodities.

No. 470 (Witness for Kentucky Railroad Commission) excerpts from bulletin "Monthly Supplement Crops and Market-Farm Returns 1924", published by United States Department of Agriculture.

No. 483 (Gardner), 26 pages, which relates to fourth-section departures and illustrates the fourth-section relief desired by Southern Railway System lines.

No. 485 (Richmond), 4 pages, which relates to fourth-section relief desired by Atlanta, Birmingham Atlantic Railway.

No. 495 (Chadwick), which relates to fourth-section relief desired by Mobile & Ohio Railroad Company.

No. 499 (Dalton), 4 pages, excerpts from order of North Carolina Corporation Commission, October 22, 1923, in re application of rates via two designated railroads.

(4) On the hearing of the appeal before the Supreme Court, the original exhibits need not be printed in full; but either side or any party by counsel or the Court or any member thereof may refer to the original exhibits numbered 1 to 500, inclusive, or to any one or more of them or to any part or portion thereof, including any officially published report of the Government of the United States or of any State referred to in the transcript, with the same force and effect as if the same had been printed in full in the transcript; provided, if either side or any party shall rely on the original exhibits or on any one or more of them or on any part or portion thereof and desires the Court to consider the same, he shall print in full in his brief such exhibits or exhibit or such parts or portions thereof as he desires the Court to consider and shall give such description thereof

and reference thereto that the same may readily be identified and located.

This August 21st, 1930.

Charlie C. McCall, Hugh White, J. W. Brassell, Edgar Watkins, Solicitors for Plaintiffs. Elmer B. Collins, Special Assistant to Attorney General; Daniel W. Knowlton, E. W. Reidy, Solicitors for Interstate Commerce Commission. W. N. McGe-
[fol. 244-c] hee, Dunn A. Gwathmey, Solicitors for Defendant Carriers.

Order

It is ordered that the within and attached stipulation and narrative be and the same are hereby approved; and in preparing, certifying and transmitting the transcript of the record to the Supreme Court of the United States the Clerk is directed to proceed in accordance therewith.

This 21st day of August, 1930.

Wayne G. Borah, United States District Judge, sitting under order of designation, in the Northern District of Alabama.

[fol. 244-d] In United States District Court

[Title omitted]

Additional Stipulation and Order Thereon—Filed August 22, 1930

In addition to the sworn answers, and the exhibits thereto attached and made parts thereof, to the original and amended bills, which sworn answers and exhibits therewith were introduced in evidence and relied upon by the defendant railroads on the hearing in the above-entitled cause, the defendant railroads which had appeared and filed answers, or amended answers, to said bill and amended bill likewise offered in evidence, over the objection of plaintiffs, by their counsel, the following:

(a) A duly certified copy of the tentative, or proposed report prepared and filed by an Examiner of the Interstate

Commerce Commission, to wit, Examiner Archer, who, with the Honorable Joseph B. Eastman, member of the Interstate Commerce Commission, heard the testimony and presided over the proceedings in said Docket No. 16295 and allied cases consolidated and heard therewith, which copy of said proposed report, as prepared and filed by Examiner Archer in said consolidated proceedings, was duly certified by the Secretary of the Interstate Commerce Commission;

(b) A duly certified copy of the exceptions filed by the Alabama Public Service Commission to said proposed report in the consolidated proceedings before the Interstate Commerce Commission; and

(c) An abstract from petition for rehearing filed by the Alabama Public Service Commission in said consolidated proceedings, under Docket No. 16295, before the Interstate Commerce Commission, wherein it was stated that the mileage scales of fertilizer rates proposed by the representatives of the public (which were the same as the scales prescribed by the Alabama Public Service Commission on or about May 26, 1924, for general application throughout the [fol. 244-e] State of Alabama on intrastate traffic) would, if applied generally throughout southern territory, have reduced the revenues of the carriers in southern territory, based upon the traffic test made in said consolidated proceedings, approximately $1,250,000 per annum.

To the introduction of said copy of said tentative, or proposed, report of Examiner Archer mentioned in (a) above, to the copy of the exceptions of the Alabama Public Service Commission thereto, mentioned in (b) above, and to said quotations from the petition for rehearing filed by the Alabama Public Service Commission mentioned in (c) above, the plaintiffs objected on the ground that the same were irrelevant and incompetent, which objections were overruled, and to which ruling plaintiffs excepted and were allowed an exception. It is agreed that, subject to said exceptions allowed, said certified copies of the documents in (a) and (b) above, which have been duly filed and are of record, shall be incorporated, in the record on appeal; and that the foregoing statement contained in paragraph (c) above shall stand in lieu of the quotations made from the

petition for rehearing filed by the Alabama Public Service Commission in said proceedings before the Commission.

This Aug. 21st, 1930.

Charlie C. McCall, Hugh White, J. W. Brassell, Edgar Watkins, Solicitors for Plaintiffs. W. N. McGehee, Dunn A. Gwathmey, Solicitors for Defendant Carriers.

The foregoing stipulation was this day filed and is approved, and in preparing, certifying, and transmitting the transcript of the record to the Supreme Court of the United States, the Clerk of this Court will proceed in accordance therewith.

This the 21st day of August, 1930.

Wayne G. Borah, United States District Judge, sitting under order of designation, in the Northern District of Alabama.

[fol. 244-f] In United States District Court

[Title omitted]

Order Designating Record—Filed August 22, 1930

The plaintiffs-appellants and the defendants-appellees, having seasonably filed and served their respective præcipes for record and amended præcipes indicating the portions of the record to be incorporated in the transcript on the appeal; upon consideration whereof by the Court, it is ordered that in preparing, certifying, and transmitting the transcript of the record to the Supreme Court of the United States, the Clerk of this Court shall include therein the following matters:

1. The original bill of complaint and exhibits thereto attached, with the exception of Exhibit A, and the orders of the Court indorsed on the bill.

2. The amended bill of complaint and exhibits thereto attached.

3. The answer filed by the United States and the exhibits thereto attached, which it was stipulated by the parties and

ordered by the Court should stand as the answer of the United States to the bill of complaint as amended.

4. The intervention and answer of the Interstate Commerce Commission, which it was stipulated by the parties and ordered by the Court should stand as the answer to the bill of complaint as amended.

5. The answer of the Southern Railway Company, et al., with all the exhibits attached thereto, with the exception of such exhibits as are attached to the answer of the United States.

6. The answer of the Southern Railway Company, et al., to the bill of complaint as amended.

7. The answers of the Louisville and Nashville Railway [fol. 244-g] Company, et al., to the original bill of complaint and to the bill of complaint as amended.

8. The order of February 13, 1928, signed by the three Judges composing the specially constituted District Court and denying the application for interlocutory injunction.

9. The order and decree of June 24, 1930, signed by the three Judges composing the specially constituted district Court and denying the application for permanent injunction and dismissing the bill.

10. Copy of opinion signed by the three Judges composing the specially constituted District Court in support of the order and decree of June 24, 1930, denying the application for a permanent injunction and dismissing the bill.

11. Petition for appeal and order thereon; assignment of errors; and appeal bond.

12. Citation on appeal and acknowledgment of services thereon.

13. Stipulation of August 18th, 1930, including narrative of evidence and original exhibits, and order approving the stipulation.

14. Additional stipulation of August 18th, 1930, including tentative report of Examiner Archer and exceptions of Alabama Public Service Commission thereto, referred to in

and required to be copied and transmitted by said stipulation, and order approving stipulation.

15. Citation.

16. This order.

This 21st day of August, 1930.

Wayne G. Borah, United States District Judge, sitting, under order of designation, in the Northern District of Alabama.

Approved:

Charlie C. McCall, Hugh White, J. W. Brassell, Edgar Watkins, Solicitors for Plaintiffs. Elmer B. Collins, Special Assistant to Attorney General; Daniel W. Knowlton, E. M. Reidy, Solicitors for Interstate Commerce Commission. W. N. McGehee, Dunn A. Gwathmey, Solicitors for Defendant Carriers.

[fol. 244-h] In United States District Court

[Title omitted]

Order Concerning Transcript of Record—Filed August 22, 1930

It appearing to the Court that the narrative statement of the evidence prepared in accordance with Equity Rule 75 having been agreed to by the parties and having heretofore been printed by the Supreme Court and therefore conforming to the requirements of printed records in the Supreme Court of the United States, no typewritten record need be prepared and the Clerk of the District Court for the Northern District of Alabama, holding sessions at Birmingham, shall attach such printed record in lieu of a copy thereof in making return to the Supreme Court of the proceedings on appeal in the above styled cause.

This August the 21st, 1930.

Wayne G. Borah, United States Judge, sitting, under order of designation, in the Northern District of Alabama.

[fol. 244-i] In United States District Court, Northern District of Alabama, Southern Division, Holding Sessions at Birmingham

In Equity. No. 613

State of Alabama and Alabama Public Service Commission

vs.

United States *et al.*

Narrative Statement of the Testimony, Prepared in Compliance with Equity Rule No. 75

Before Commissioner Eastman and Examiner Archer

Atlanta, Ga., April 20, 1925.

Appearances:

Frank W. Gwathmey, 423 Munsey Bldg., Washington, D. C., for Atlantic Coast Line R. R. Co., Seaboard Air Line Ry. Co., et al.

Wm. N. McGehee, 1300 Pennsylvania Ave., Washington, D. C., for Southern Ry. System lines, et al.

W. B. Rodman, 223 Terminal Bldg., Norfolk, Va., for Norfolk Southern R. R. Co., et al.

[fol. 245] Ray Pope, Assistant General Freight Agent, and Gus Richmond, Commerce Agent, Atlanta, Ga., for A. B. & A. Ry.

E. D. Mohr and L. L. Drescher, Louisville, Ky., for the L. & N. R. R. Co.

Alex. M. Bull, Washington, D. C., for Gulf, Mobile & No. R. R. Co. and Birmingham & Northwestern Ry. Co.

J. L. Shepperd, Memphis, Tenn., for Illinois Central R. R. Co. et al.

J. E. Monroe, 802 Q. & C. Bldg., New Orleans, for the Alabama & Vicksburg Ry.

Jas. Menzies, Freigh Traffic Manager, Wilmington, N. C., for the A. C. Line R. R. Co.

N. V. Hutchinson, Winona, Miss., for the Columbus & Greenville Railway Co.

J. A. Streyer, 101 Marietta St., Atlanta, Ga., appearing for members of American Short Line R. R. Assn.

J. A. Perry and E. M. Price for Georgia Public Service Comm.

R. Hudson Burr and J. H. Tench for Florida R. R. Commission.

M. C. Moore and B. F. Martin for Mississippi R. R. Comm.

Rush H. Knox, for Attorney-General of Mississippi.

L. F. Orr for Kentucky Railroad Commission.

Harry T. Moore, Atlanta, Ga., for Atlanta Freight Bureau.

John A. O'Rourke, Atlanta, Ga., for West Palm Beach Traffic Bureau, et al.

R. L. Askea, Raleigh, N. C., for Raleigh Freight Bureau, et al.

Chas. E. Cotterill, 525 Grant Bldg., Atlanta, Ga., for the American Farm Bureau Federation, et al.

A. J. Young, Atlanta, Ga., for International Agricultural Corporation.

M. R. Beaman, Wilson, N. C., for Eastern Carolina Wholesale Dealers and Manufacturers Assn.

T. A. Bosley, Richmond, Va., for National Fertilizer Assn., et al.

M. Walsh, Dothan, Ala., for Dothan Chamber of Commerce.

[fol. 246] J. S. Davant, Memphis, Tenn., for Memphis Freight Bureau.

J. L. Roberts, New York City, for the Barrett Company.

W. H. Hendley, Spartanburg, S. C., for the Spartanburg Transportation Assn.

T. J. Burke, Charleston, S. C., for Charleston Traffic Bureau.

A. J. Whitman, New York City, for American Agricultural Chemical Co.

R. L. Rogers, Atlanta, Ga., for Swift & Co.

J. O. Cromwell, Macon, Ga., for Macon Chamber of Commerce.

F. E. Harrison, Jr., for Florida Traffic Assn.

R. G. Cobb, for Mobile Chamber of Commerce.

E. B. Gaines, for Savannah Traffic Bureau.

Oscar Sweidler, New York City, for American Cyanimid Co.

L. F. Daspit, New Orleans, La., for Louisiana Farm Bureau Federation.

Fred Juenger, New York City, for Texas Gulf Sulphur Co.

Thos. D. Guthrie, for Jacksonville Traffic Bureau.

C. W. Hayward, for Meridian, Miss.

D. A. Dashiell, Norfolk, Va., for Royster Guana Co.

Hugh M. Framton, Washington, D. C., for United States Department of Agriculture.

R. E. Quirk, Washington, D. C., for American Cyanimid Co.

Carl Giessow and Edgar Moulton for New Orleans Joint Traffic Bureau.

C. L. Neill and T. P. Goodwin, Jackson, Miss., for Mississippi Farm Bureau Federation.

A. G. Patterson, J. H. Alldridge and Hugh White, for Alabama Public Service Commission.

J. F. Dalton, Norfolk, Va., for Norfolk Southern R. R., et al.

Statement by Commissioner Eastman

Gentlemen, this is Docket No. 16295, an investigation on the Commission's own motion of interstate ratse on fertilizer, fertilizing compounds and fertilizer materials between [fol. 247] points in Southern Classification Territory, including rates between points in that territory on the one hand, and the north bank of the Ohio River and Helena, Ark., and points in Virginia, on the other. There have likewise been consolidated for hearing at this investigation, Docket No. 16335, rates on fertilizers and fertilizer materials within the state of South Carolina; Docket No. 16336, rates on fertilizers and fertilizer materials within the state of Alabama; and Docket No. 16484, rates on fertilizers and fertilizer materials within the state of Georgia, these three dockets being investigations under Section 13 of the Interstate Commerce Act instituted upon petition of the carriers, and involving alleged undue preference on intrastate traffic and alleged undue prejudice to interstate traffic in the three named states. Various notices have been sent to all interested parties in regard to this investigation, indicating some of the points which the Commission felt ought to be developed in connection with this investigation. I think it unnecessary to burden the record by repeating the substance of those notices at this time (Tes. 9).

Statement by Mr. Gwathmey

Mr. Commissioner, perhaps I ought to say that it has seemed to the carriers that the most satisfactory way to present this case from their standpoint will be to have one witness, Mr. Menzies, who will deal in a broad way with the general questions that are involved in this proceeding, and he will be followed by other witnesses who will take up the situations relating particularly to certain localities and certain states. Mr. Menzies will, as I say, touch upon the general features of the case, and will further refer particularly to the States of North Carolina and Virginia; other witnesses will deal with other states in the course of the proceedings (Tes. 13-14).

Mr. JAMES MENZIES was called as a witness and, having been duly sworn, testified as follows:

My name is James Menzies; I am freight traffic manager of the Atlantic Coast Line and have been in the service of [fol. 248] that company about 33 years. I appear as Chairman of a committee especially appointed by southern carriers, and as such will deal in a general way with the southern situation as a whole, but my testimony will relate particularly to situations in North Carolina and Virginia.

Chairman Burham, of the Southern Freight Association, on March 23, 1925, submitted to shippers a scale of rates which, with few exceptions, class 1 railroads in Southern Territory propose to apply uniformly for single and joint line hauls. This scale is commonly known as the Royster scale. The territory embraced in the proposed adjustment includes all points on and east or south of the Mississippi and Ohio Rivers, Virginia cities and points south thereof, except points on the C. & O. Ry.; points on the N. & W. Ry. from Norfolk to Cincinnati, and points on the Virginian from Norfolk to Deepwater, W. Va., said lines or routes being embraced in what is known as Trunk Line territory. Through this territory just described the carriers are proposing the application of the scale referred to (Tes. 14-15).

The territory for which I am speaking is slightly different from that defined by the Interstate Commerce Commission in its order of October 7, 1924. The C. & O., N. & W.

and Virginian are in Official Classification territory and their rates are governed by Official Classification. One or more of these lines, however, may desire to testify in this case, but I have no information as to whether or not they will do so. What I may say for account of other Trunk Lines in Southern Territory may not in all respects conform to the position of the Norfolk Southern Railroad and the Florida East Coast Railway, which lines, I understand, will deal directly with their own situations.

As to what is meant by the Royster scale and how it originated: The so-called Royster scale was first established upon complaint to the Commission by the F. S. Royster Guano Co., of Norfolk, on October 8, 191[illegible] The complaint alleged that rates on fertilizer via the Atlantic Coast Line and Seaboard Air Line from Norfolk to points in North Carolina were higher for like distances than the interstate rates from Wilmington to points in North Carolina. The complainants alleged that there was a large movement of fertilizer from Norfolk to points in North [fol. 249] Carolina, approximately 250,000 tons, and that the rates attacked were discriminatory against Norfolk and unreasonable per se.

(Statements were thereupon received in evidence and marked "Carriers' Exhibits Nos. 1 to 33 inclusive, Witness Menzies.") (Tes. 15-17.)

I will file statement marked Exhibit No. 1, showing the rates in effect at the time of complaint from Norfolk as compared with the rates from Wilmington to points in North Carolina for approximately equal distances. The decision of the Interstate Commerce Commission rendered on July 1st, 1914, as reported in 31 I. C. C. 458-462, reduced the rates from Norfolk to points in North Carolina to approximately the level of the North Carolina intrastate scale. The rates so established from Norfolk are shown in Column B, and are known as the first Royster Scale. However, during the year 1913 a serious controversy arose between the carriers and the North Carolina authorities that had its inception in the relationship between interstate rates to the Virginia Cities and North Carolina points covering various classes of traffic. The matter of interstate rates was finally disposed of as result of conferences be-

tween representatives of the Carriers and the North Carolina Corporation Commission.

During this period, the general question of intrastate rates was the subject of bills introduced into the North Carolina Legislature with the final result that a special commission was appointed by the Governor of North Carolina to investigate the entire rate structure within the state and to make such readjustment as it might deem proper when approved by the Governor. The special commission finally ordered reductions on general class and commodity traffic, including fertilizer, and as to fertilizer the carload rates so established are indicated on my Exhibit No. 1 as Scale J. The decision of the special Commission having been approved by the Governor, the carriers filed with the state authorities formal protest against the reductions, and likewise submitted to the Interstate Commerce Commission, under date of October 10th, 1924, a formal protest against [fol. 250] the action on the part of the North Carolina authorities because the rates, in the opinion of carriers, were too low, and because of the effect that the reductions might have on interstate traffic. Regardless of the carriers' objection, the reduced rates were established, becoming effective October 13th, 1014. The carload rates on fertilizer thus fixed by the special commission were subject to minimum of 12 tons, with a differential of 20 cents per ton over the single line scale for joint hauls, less carload rates being made 20 per cent higher than the carload rates. (Tes. 17-19.)

Following the Legislative action in North Carolina just referred to, the F. S. Royster Guano Company filed with the Interstate Commerce Commission another complaint (reported in 38 I. C. C. 190), alleging unreasonableness in the rates from Norfolk, but complaining particularly and primarily upon the ground of undue discrimination against Norfolk on account of the newly established intrastate rates in North Carolina. This complaint was made against other lines in North Carolina as well as the Atlantic Coast Line Railroad and Seaboard Air Line Railway. The Interstate Commerce Commission in this reaffirmed the rates established in the First Royster Case, thus making no change in the then existing rates from Norfolk. The Commission, however, ordered the removal of the discrimination.

This is known as the Second Royster Case. The Commission reaffirm- in this second case its findings as made in the first Royster Case, that those rates were reasonable maximum rates. When the carriers notified the North Carolina Corporation Commission of their purpose to remove the discrimination by establishing rates within North Carolina on the scale prescribed by the Interstate Commerce Commission from Norfolk to North Carolina points, the Corporation Commission petitioned for a reopening of the case, which petition was granted and rehearing was held in Norfolk in July, 1916. At this hearing the Complainant, the Royster Guano Company, moved to dismiss the proceedings on the ground that the object of the complaint had been to secure rates from Norfolk on a level with the North Carolina intrastate rates, and as [fol. 251] there was a possibility of this result not being accomplished it was desired that the case be dismissed. This motion was concurred in by the North Carolina Corporation Commission but opposed by the carriers, and after consideration, the Interstate Commerce Commission denied the motion. The case was decided by the Interstate Commerce Commission, ordering that the rates from Norfolk to North Carolina destinations be made on a designated scale, which scale was identically the same as the new North Carolina intrastate scale, subject, however, to minimum of 15 tons per car, rates for joint hauls to be 20 cents per ton higher than for single line application.

Thus was established what is now known as the Third Royster Scale, and under which an equality of the interstate and intrastate rates was made effective. In other words, the rates established under previous decisions of the Interstate Commerce Commission in the First and Second Royster Cases were reversed and the new rates established by the special commission appointed by the Governor of North Carolina were adopted in their stead. From the minority report of Commissioner Hall in this case I quote the following:

I concur in the majority report except as to the scale of maximum interstate rates prescribed. This is reduced from the basis twice found reasonable by us on records which are incorporated in the present record, and which in my judgment are fortified thereby. It will reduce inter-

state rates from Norfolk to North Carolina stations, which for several years have been maintained with our approval by three of the four defendants.

"If reasonable in 1914 and 1915, when the former records were made, or in 1914 and 1916, when our former findings were announced, they can hardly have become unreasonable during the intervening period of mounting costs. The majority report attaches significance to a comparison with state-made scales in the South, and also to the declared purpose of the carriers to seek application throughout the South of whatever scale is prescribed here. It attaches less significance to the genesis of those state-made scales, the rivalry between states which contributed thereto, and [fol. 252] the higher rates prevailing in such states as New Jersey, Pennsylvania, and Maryland, where the density of traffic in fertilizer is about as great and of all traffic vastly greater."

The Third Royster Scale, as already indicated, became effective from Norfolk to North Carolina points on October 15th, 1918, and has been in effect continuously since that time. The same scale has also been continuously in effect in North Carolina since October 13th, 1914, except that under a provision of the North Carolina Corporation Commission 10 per cent less than fertilizer rates is applicable on certain materials used in the manufacture of Fertilizer when shipped in carload lots of 25 tons or more. The Interstate Commerce Commission prescribed minimum of 15 tons per car in connection with its final decision in the Third Royster Case, and the United States Railroad Administration subsequently established a minimum of 15 tons for intrastate application in North Carolina, thereby entirely removing any inequalities in the minima governing inter and intrastate rates. (Tes. 19-22.)

When the scale ordered by the Interstate Commerce Commission in the First Royster Case was established, the carriers voluntarily revised the rates from Charleston, S. C., to North Carolina destinations on the same basis, producing, as a rule, reductions in those rates, but leaving them higher than the newly reduced North Carolina intrastate scale. This resulted, for the time being, in the application of the same rates, distance considered, from

Charleston as from Norfolk to destinations in North Carolina. After the rates in North Carolina were reduced by the special commission appointed by the Governor of that state, Charleston complained of discrimination and appealed to the Interstate Commerce Commission for relief. This case is reported in 53 I. C. C. 506-514. Before the decision in the Charleston Case the final decision in the Third Royster Case was rendered, and the Commission ordered from Charleston to North Carolina points the same scale as had been fixed for application from Norfolk, all of which means that with the exception of certain materials used in the manufacture of fertilizer the rates from Nor-
[fol. 253] folk and Charleston to North Carolina points and rates between points in North Carolina became uniform, both as to the scale for single line application and joint hauls, and also carload minimum weight. It will thus be seen that the scale that the carriers propose for uniform application in the South is already in effect to North Carolina destinations for interstate and intrastate application in a territory that largely exceeds any other territory in the South in the consumption of fertilizer and in the transportation thereof. (Tes. 22-23.)

The distinction between Column H in Exhibit No. 1, and Column I is: H were the published rates, and I is the scale, there are just a few differences there, and I suppose it was just simply a clerical error that there was any difference in them. It means the carriers went below the maximum in one or two cases.

I said that the Director-General made the minimum the same intrastate and interstate during the period of Federal Control.

"Q. According to this exhibit, that change having been made on September 5th, 1920, is the exhibit wrong in that respect?

"A. I think the exhibit is wrong in that respect." (Tes. 24.)

It would appear from the order of the Commission in the Third Royster Case that it was thoroughly familiar with the conditions in the South generally when the new rates

from Norfolk were put into effect. I quote from the opinion of the Commission in the Third Royster Case as follows:

"Their witnesses (referring to the railroads) testified that the intrastate scale in the Southern States are not voluntarily maintained by them and are unreasonably low. They say that repeated and ineffectual attempts have been made to have these rates increased to what they consider a fair basis. Where interstate rates in those states have been reduced to the level of the state rates it has been because the existence of the latter rendered it impossible to maintain interstate rates on a higher basis."

[fol. 254] It is our purpose, as stated, to make the less carload rates on fertilizer 20 per cent in excess of the carload rates. The spread thus brought about between carloads and less is very small as compared with the spread on other commodities, some of which might be mentioned as follows: The spread on cement, carloads and less, is approximately 50 per cent; likewise, on building lime and brick and many other commodities, that might be stressed.

Were it not for the desire on the part of the Southern carriers to extend unusual advantages in the handling of fertilizer traffic, the normal basis on this commodity when in carloads would have been Sixth Class, and if the less than carload rates were made 20 per cent higher than carloads the resulting figures would have been very different from what we now propose. I will file my Exhibit No. 2 showing the less carload rates as proposed by the carriers compared with rates in the different states made 120 per cent of Sixth Class. From the earliest records of the carriers, and which in some cases was before the appointment of state railroad commissions, the less carload rates on fertilizer were made but slightly higher than the carload rates, and in some cases no difference at all existed. To advance the rates on fertilizer in less carload quantities to what might be considered the normal class basis would be, in our opinion, too great an advance, and especially since we have for so many years treated fertilizer, less carloads, on the unusually low basis already outlined. (Tes. 24-26.)

I call Sixth Class the normal basis because if there were no special commodity rates on fertilizer, that is the rating

it would take. I suppose it moves on class rates in small quantities between points where the movement is very slight and our tariffs do not provide for commodity rates.

No one has ever felt obliged to contest for a rating, because it was not a matter of any particular consequence. Later on in my testimony, I will touch upon the data as to the volume of movement in L. C. L. quantities; I don't think it is at all complete though.

To explain how the basis of 90 per cent of the fertilizer rates for application on fertilizer materials in North Carolina came about: Prior to February 2nd, 1909, the rates on [fol. 255] fertilizer and fertilizer material in North Carolina were the same. As a result of complaint made by the Continental Guano Company of Wilson, N. C., the North Carolina Corporation Commission, after hearing, ordered 10 per cent less than fertilizer rates on certain fertilizer materials, with a carload minimum weight of 60,000 pounds. Subsequently and effective February 15th, 1910, the carload minimum was reduced to 50,000 pounds. It was contended by Complainants that the heavy minimum would restrict the movement to fertilizer factories. The position of carriers was that this would not be the case, and that the result would be the application of the reduced rates on a large volume of imported material moving direct to consumers. This contention on the part of carriers has been justified by experience since the reduction was made. Carriers published the reduced rating under protest and made it applicable on intrastate traffic only. Following the decision of the Interstate Commerce Commission in the Charleston Fertilizer Case (53 I. C. C. 506), the United States Railroad Administration cancelled the rating on fertilizer material in North Carolina, but after Federal Control had ended the 90 per cent basis was reestablished through error or oversight on the part of the Rate Bureau. This question was before the Interstate Commerce Commission in the Goldsboro Case in connection with the movement of interstate shipments of fertilizer material from Wilmington to North Carolina destinations, and the Commission in that case held that there was no justification for lower rates on fertilizer material than on fertilizer. In other words, the Commission in that case specifically fixed the Royster Scale for application on fertilizer materials

moving from Wilmington, these being imported materials, and therefore subject to the Commission's jurisdiction.

In four instances the Interstate Commerce Commission in the various cases I have cited sustained the Third Royster Scale or rates even higher than the Third Royster Scale—the First, Second and Third Royster Cases, and in the Charleston Case. (Tes. 26-28.)

I said that the so-called Third Royster Scale is, in fact, the same as the North Carolina state scale, and that it is a scale that was adopted by the North Carolina Corporation Commission and made effective on October 13th, 1914, [fol. 256] and has been continuously in effect in North Carolina since that time. I can mention other cases in which the Third Royster Scale was recently specifically approved by the Interstate Commerce Commission. In the case of the Goldsboro Chamber of Commerce vs. A. C. L. Railroad et al., 91 I. C. C. 315-328, decided July 10th, 1924, the Commission ordered reductions in the interstate rates on fertilizer and fertilizer materials from Wilmington, N. C. to destinations in North Carolina, and prescribed the Third Royster Scale as a reasonable scale for future application. The Commission further directed the use of this scale as a basis upon which Fourth Section relief was granted in that case from Wilmington to points in South Carolina and Virginia or through South Carolina to points in North Carolina. That last feature was dealt with in the Commission's supplemental Fourth Section Order in that case, in which the Commission dealt not only with the rates to points in North Carolina, but also with the rates from Wilmington to points in Virginia and points in South Carolina.

By Commissioner Eastman:

"Q. Now, isn't it true that the major issue in that case was whether certain traffic orginating at the ports was intrastate or interstate?"

"Mr. Gwathmey: My answer would be that that was not the major issue in that case, it came up in a more or less incidental way; however, Mr. Askea, who represented the Complainant in that case, and who is probably here, may take a different view of it.

"Commissioner Eastman: There wasn't any attack on the level of the rates, was there; that is, no attempt, at least no attempt to show that the rates ought to be lower than the North Carolina intrastate rates?

"Mr. Gwathmey: There was no attempt to show that the rates ought to be lower than the 90 per cent scale, that is true." (Tes. 29-30.)

I will also refer to the Meridian Case, decided December 29th, 1920, (60 I. C. C. 5-51) higher rates than the Royster Scale were authorized. This case involved the rates from Meridian, Miss., to points in Alabama. In ad-
[fol. 257] dition to the territory already covered, the Royster Scale applies in other important instances as follows: From Richmond, Va., to points in North Carolina; from Wilmington and other points in North Carolina to points in South Carolina; from points in South Carolina to points in North Carolina; from points in North Carolina to points in Virginia.

Baltimore is the heaviest shipper of fertilizer to Carolina Territory, other than Southern manufacturing points, and the rates therefrom were based on the Royster Scale south of Norfolk.

Rates from the following points are, generally speaking, higher than the Royster Scale: From Savannah, Atlanta, Elberton, and Macon to points in South Carolina; from Albany, Ga., to points in Florida; from Charleston to South Carolina points on imported fertilizer material; from Dothan and Montgomery, Ala., to Georgia points.

Rates between points in Florida are higher and lower than the Royster Scale.

Rates from Blackshear to points in Florida, which were fixed by the Interstate Commerce Commission in the Blackshear Case, 87 I. C. C. 654, are both higher and lower than the Royster Scale.

Intrastate rates in Virginia are both higher and lower than the Royster Scale. (Tes. 30-32.)

I file my Exhibit No. 3 which shows the present rates from and to representative points, compared with rates proposed by carriers. It will be observed that in nearly all cases reductions will be made under carriers' proposal. It is a fair statement from what I have said that the so-called Royster Scale is not only applied at this time intra-

state in North Carolina, but into the state of North Carolina from Norfolk, for instance, and Charleston, S. C., and that rates on the level of the Royster Scale, or rates even higher than the Royster Scale, are in a very great number of instances now in effect in Southern Territory. I will deal further later with that subject.

On this Exhibit No. 3 just filed, I have undertaken to show numerous representative instances of rates that are today higher than the Royster Scale, and I have shown also some [fol. 258] that are lower. These rates as shown on Exhibit No. 3 are rates from important fertilizer shipping points, such as Savannah, Blackshear, Albany, Valdosta, Dothan, etc.

There are some that are lower on this exhibit. I do not intend to convey the impression from this exhibit that the rates in the South today are higher than the Royster Scale. I have undertaken to show there numerous important instances in which they are in fact higher than the Royster Scale. It is a fact that under the carriers' proposal scale reductions will be made also in the joint line rates. Carriers are proposing a mileage scale for joint haul application over trunk lines within the different states that will, as a rule, greatly reduce the existing charges.

I file an exhibit, marked No. 4, illustrating the reductions that will be made.

The reductions on interstate joint hauls will be greater than those specified for intrastate hauls, but I have prepared no exhibit covering the matter.

My proposed rates are not the same for joint line and single line applications; generally the joint line scale is 34 cents higher than the single haul. I am using in this exhibit, the joint rates under the Royster Scale; I am comparing the precent joint rates with the proposed joint rates. (Tes. 32-34.)

The present rate from a point on one line to a point on another line, the total distance of which is 100 miles, is $3.16 per ton in Georgia; while the carriers' proposal for that distance is $2.82 per ton. These are intrastate rates with which I am making comparison in the Exhibit No. 4. I started that if I used the interstate rates the showing would be stronger from my standpoint than if I used the intrastate rates, because the interstate rates would show

relatively higher rates than at present are in effect. But these are the intrastate rates in these various states.

I haven't any definite figures from all points, but from what I have secured I think the joint haul movement will be approximately 25 per cent of the total; I mean by that, the joint hauls as between Class 1 roads.

I am not including hauls to points on short line railroads; I think that term will include all connections. In other words, my impression is that as a whole the Trunk Lines [fol. 259] will deliver at their own stations about 75 per cent of the total traffic they carry, and about 25 per cent will go to their connections. There is a heavy joint haul movement as between the Class 1 railroads. The joint haul movements over the Class 1 railroads will vary greatly, according to point of shipment; take, for instance, from Norfolk, each of the Carolina lines, each of the principal Carolina lines reach Norfolk with their own rails; therefore, one line would not haul the traffic of the other; in the case of Wilmington, some of these lines do not reach that point, and therefore there would be a larger joint haul movement from Wilmington than from Norfolk. At Charleston, the case is very nearly identical to Norfolk, the three principal lines there, the Southern Railway, the Seaboard Air Line and the Atlantic Coast Line, all reach Charleston with their own rails, and necessarily one does not carry the tonnage destined to local stations on the other. When you get down to Florida—well, we might as well describe Savannah before getting down to Florida—at Savannah, I am of the impression that the joint haul movement there would be larger than in North Carolina, because a number of the lines don't go to Savannah, I am talking about the Class 1 railroads. (Tes. 34-36.)

So far as the short line railroads in Georgia are concerned, there are a great many more than in other states, and our deliveries to the short line connections I think would be greater than they would be elsewhere. As to Florida, there is no interchange between the Seaboard and the Atlantic Coast Line in that state. The great bulk of the fertilizer that is produced in Florida is at points common to the Atlantic Coast Line and the Seaboard Air Line, and as in the case of Norfolk, each handles its own traffic; that is the case, for instance, at Jacksonville, at Gaines-

ville, at Tampa and other like points where fertilizer may be manufactured or mixed.

When I gave the estimate of 25 per cent, as I did a moment ago, I included all deliveries to all connections.

There is a substantial movement over the Class 1 Railroads alone. (Tes. 36-37.)

Commenting briefly upon the Blackshear decision in the relation to the previous Royster Cases: Blackshear, Ga., is a local station on the Atlantic Coast Line Railroad located [fol. 260] between Jesup and Waycross, Ga., 85 miles from Jacksonville. Many years ago, in order to enable the Blackshear fertilizer plant to compete with the plants at Jacksonville, we established rates on fertilizer from Blackshear to Florida destinations made small differentials over Jacksonville. This adjustment was apparently satisfactory until on February 9th, 1922, the Blackshear Manufacturing Company filed complaint with the Interstate Commerce Commission alleging that the rates on fertilizer from Blackshear to Florida points were unreasonable and unduly prejudicial as compared with the rates from Jacksonville to the same points of destination. As the result of this complaint, the Commission fixed two mileage scales from Blackshear to destinations in Florida, one of which covered territory in Florida and north of the Seaboard Air Line and Louisville & Nashville from Jacksonville to Pensacola. The other scale, which was from 10 to 25 cents per ton higher, applied to points south of the line just described. Under this decision the rates from Blackshear to points in Florida for some distances were higher than the rates from Jacksonville for the same distance and in other cases lower, and an effort was made to remove these inequalities between the rates from Blackshear and the rates from Jacksonville to points in Florida, but thus far no definite results have been obtained. It is assumed that the differences now existing will be disposed of during the present investigation.

I file my Exhibit No. 5, which shows rates in effect prior to the revision under the Blackshear Decision (87 I. C. C. 654-667): the rates made applicable under that decision and the rates which the carriers now propose. A few illustrative points only are shown, but to each of the points named, the Blackshear Manufacturing Company made carload shipments during the year 1924.

In its report in the Blackshear Case, the Interstate Commerce Commission in referring to its previous decisions the socalled Royster Cases referred to what were termed "the very narrow issues" which those cases presented. For the purpose of showing the very great importance of the issues in the Royster Cases as compared with those involved in the Blackshear Case, I desire to call attention [fol. 261] to the difference in the volume of tonnage affected by the Royster Case on the one hand as compared with the Blackshear Decision on the other. (Tes. 37-39.)

I file my Exhibit No. 6, which shows the movement of fertilizer, carloads and less, from Blackshear, Ga., to all destinations for the year 1924. It will be observed that the movement from Blackshear is limited in volume. There were 7,455 tons, of which 407 tons were less carloads, to destinations in Georgia, which were not involved in the Blackshear complaint. There were 1,423 tons, of which 253 tons were less carloads, to destinations in Florida on and north of the Jacksonville-Pensacola line, and 7,772 tons, of which 766 tons were less carloads, to stations in Florida south of that line. It will be noted, therefore, that the movement from Blackshear to Florida points is insignificant when compared with the large tonnage of more than a million tons per annum moving under the Royster Scale, or under the North Carolina Scale, which is the same as the Royster Scale. In other words, more than 100 times as much fertilizer moves under the Royster Scale than from Blackshear to Florida points. The movement under the Royster scale is, in fact, approximately three times the total consumption of fertilizer in Florida and one and one-half times the total consumption in Georgia.

My view on the subject is that if the issues in the Royster Case were narrow, as stated by the Interstate Commerce Commission in its report, certainly it is not correct to assume that a very large and important volume of tonnage and very important issues from that statement were involved in the Royster Case, and much more important than any that were involved in the Blackshear Case.

I will file my Exhibit No. 7, showing the consumption of fertilizer in the Southern States from 1912 to 1923 inclusive, as taken from the American Fertilizer Handbooks.

As will be noted therefrom, North Carolina is by far the largest consumer. During the year 1923 that state con-

sumed in excess of 23 per cent of the fertilizer used in all the Southern States.

In 1923 the total consumption of fertilizer in the Southern States, as given by the American Fertilizer Handbook [fol. 262] was 4,220,807 tons while North Carolina consumed 1,081,811 tons, or 23 per cent of the total. I am unable to give the tonnage handled by all of the North Carolina lines, but during the year 1923 the Atlantic Coast Line handled into, or out of, or between points in North Carolina 583,630 tons, representing 46 per cent of the total fertilizer tonnage handled by the A. C. L. during that year. (Tes. 39-41.)

Concerning why the consumption of fertilizer in Georgia has decreased about 50 per cent between 1914 and 1923, whereas the consumption in North Carolina increased about 25 per cent: The boll weevil I presume was the principal cause for the decrease in consumption in Georgia, and the boll weevil did not reach North Carolina until recently; I don't know what effect it will have on the consumption of fertilizer. I should say that would be the reason for the decrease in South Carolina also.

I have just shown that 46 per cent of the total fertilizer tonnage handled by the Atlantic Coast Line Railroad in 1923 moved into, out of or between points in North Carolina; all of this tonnage moved under the so-called Royster Scale of rates.

"Q. And the same is true of the tonnage in North Carolina handled by other railroads in that state, is it not?

"A. I presume the conditions are very nearly similar as to the other lines.

"Q. I mean as to the tonnage which moved under the Royster Scale of rates?

"A. I think that is true." (Tes. 41-42.)

I can't give you a definite statement as to what percentage of our total tonnage would move under the Royster Scale, but I am reasonably sure that it would run between 50 and 60 per cent.

As to whether or not the conditions which I have outlined as to the Atlantic Coast Line are fairly representative of the conditions of the Southern Railway and Seaboard Air Line in the Carolinas: The Southern Railway and the Seaboard Air Line Railway compete with the At-

lantic Coast Line Railroad in the transportation of fertilizer from all of the larger plants in the Carolinas and Vir-
[fol. 263] ginia, and in fact throughout the Southeast generally, and it follows that what may be true of one of the lines in respect to the matters referred to is within reasonable bounds true of others. I will file as my Exhibit No. 8 a statement showing on what articles the carriers' proposed rates are intended to apply.

I have no particular comments to make on that statement, at this time. I understand the application of rates on various articles will be dealt with by other witnesses in respect to particular situations.

As to how the fertilizer tonnage handled by the Southern carriers compares with the tonnage handled in other territories: For the calendar year 1923 the class 1 railroads in the United States handled 11,179,575 tons of fertilizer, which were divided as between the sections of the country as follows:

Southern District 5,543,408, or 49.6% of total tons handled.

Eastern District 4,485,964, or 40.1% of total tons handled.

Western District 1,150,203, or 10.3% of total tons handled.

During the same year there was handled by the Class 1 railroads of the United States 2,260,015,332 tons divided as between the districts as follows:

Southern District 366,819,725, or 16.2% of total.
Eastern District 1,255,909,101, " 55.6% " "
Western District 637,286,506, " 28.2% " "

It will be observed that while Southern Carriers handled nearly 50 per cent of all the fertilizer transported in the United States during the year 1923 they handled only 16 per cent and a fraction of all carload traffic in the United States, including fertilizer. (Tes. 42-44.)

"Q. What part of the total tonnage of the railroads in the Southern, Eastern and Western Districts of the United States is represented by fertilizer tonnage?

"A. In the Southern District, fertilizer represents 1/66th part. In the Eastern District, fertilizer represents 1/280th

part. In the Western District, fertilizer represents 1.554th part."

[fol. 264] One seventeenth of the total tonnage of the Atlantic Coast Line Railroad is represented by fertilizer.

I will file as Exhibit No. 9 a statement showing the location of fertilizer factories throughout the South, together with information as to the capacity and character of these factories. Going back to that percentage of tonnage, I stated 1/17th, on the Atlantic Coast Line Railroad; that is 1/17th of the total number of tons carried. The number of ton miles would not necessarily be the same per cent.

As a rule, the tonnage of fertilizer handled in intrastate movement is much greater than is the movement between the states. This is due to the fact that fertilizer factories are spread throughout the entire South. In fact, most of the larger manufacturers have plants in various states, and naturally their shipments of fertilizer are made from the factory nearest to the point of consumption. This has a two-fold advantage to the manufacturer, because it reduces the charges of transportation and at the same time tends to expedite delivery.

This is further illustrated by the fact that, while the Atlantic Coast Line Railroad has a total mileage of 4,865 miles and has continuous rails in various directions for approximately a thousand miles, its average haul on fertilizer and fertilizer material is little, if any, in excess of 100 miles.

Generally speaking, the relative levels of existing interstate rates are higher than the intrastate rates, although sometimes they are the same. (Tes. 44-46.)

I have a statement before me showing, for instance, that the Virginia-Carolina Chemical Company have factories at 29 points in the North and South, but most of them are located in the South. The Royster Guano Company have thirteen factories. The Armour Fertilizer Works 22. The International Agricultural Corporation 17; and the American Agricultural Corporation 32.

"Q. One of the questions suggested by the Commission in its notice for consideration in this case was the following: Should fertilizer be accorded lower rates than would otherwise be considered reasonable because the use of fertilizer results in increased production which, in turn, bene-

fits the carriers? What have you to say about that subject?

"A. When the State Railroad Commissions were first created they found in effect very low rates on fertilizer. [fol. 265] The carriers even in that somewhat remote period were aware that fertilizer would stimulate production and that the use of it was especially necessary in semi-barren lands of the South that would otherwise be practically unproductive. The railroads encouraged the farmer in the direction of intensive cultivation of the soil, knowing, of course, that the successful farmer would, in the end, mean the successful railroad. The struggling little carriers then existing in the Southeast were, generally speaking, in the hands of Receivers, or about to enter or emerge therefrom. They, however, experimentally, carried stable manure or other procurable fertilizer without profit to themselves, and sometimes without cost to the user. I mention these facts to indicate that the railroads in the earlier days had the interest of the country they served at heart, as they have today, and must always have if they themselves are successful. These things the railroads learned long before the latter day politicians told them about it. The use of fertilizer, however, has long passed beyond the experimental stage, and its economic advantages are thoroughly known and established. Fertilizer is essentially a saver of labor in that by its use a given quantity can be produced on less acreage than would otherwise be possible. The farmer not only saves the labor cost which would be necessary to cultivate additional acreage, but he saves investment in land that would otherwise be necessary.

Thirty years ago, for instance, it would require from two to four acres, and sometimes more, to produce a bale of cotton in Southwest Georgia, while a bale an acre is now frequently grown, this result being obtained by intensive cultivation and the use of fertilizer. The use of fertilizer today is reduced to a business basis, and there is no more necessity for further reducing the rates on that commodity than there is to transport without cost, or at less than a reasonable profit, all articles used on a farm, such as plows, harvesters, cultivators, harrows, hoes, rakes, and scores of other necessary things, all of which greatly stimulate the production of crops, and, in fact, without which practically no crops at all could be produced." (Tes. 46-48.)

The railroads from a very early period recognized themselves the desirability of establishing as low rates as they felt they could possibly maintain on fertilizer, in considera- [fol. 266] tion of these other things that I have just mentioned, and they have not only recognized the necessity for it, but they established the rates.

I said I have been connected with the Atlantic Coast Line Railroad Company for some thirty years. I am very familiar with this fertilizer situation.

It is a fact that although the railroads initially established very low rates on fertilizer materials, various State Commissions have forced upon the carriers from time to time further reductions, which the carriers have endeavored strenuously to oppose. Repeated attempts have been made by the carriers in the Southeast for many years to secure a fair and reasonable adjustment of fertilizer rates but without avail. In various cases throughout a long period of years the carriers have suffered under these drastic reductions on this commodity. But recently, the Georgia Commission issued an order requiring a reduction of about 12 per cent in the fertilizer rates in that State, notwithstanding the fact that the rates were already very low, and the order in our opinion entirely disregarded the evidence. The carriers in this case asked the Interstate Commerce Commission to review the rates established by the State Commission, but on account of the proximity of the shipping season and the inability of the Interstate Commerce Commission to prevent the great loss that would otherwise take place, they applied to the District Court for the Northern District of Georgia for an injunction against the application of the reduced rates. Following the granting of the injunction the Georgia Railroad Commission cancelled its circular. No explanation or opinion was rendered as to why these radical changes were brought about. (Tes. 48-49.)

That is very true of Florida, but it was probably before you [Mr. Burr] became connected with the Railroad Commission. I remember the time when we handled manure for nothing in order to induce the farmers to use it. We gave rebates to get freight too, but that is more than 3 years ago. I think the only important reduction made in Florida within 30 years was on fertilizer material, and the Florida Commission ordered on these commodities 75% of the fertilizer rates—and that was extremely objec-

tionable to the carriers. I would not be able to answer without looking it up as to whether, except for the advances [fol. 267] made by G. O. 28 and Ex Parte 74, the mixed fertilizer rates in Florida are not a great deal lower than the rates the carriers voluntarily established before the Commission was created—leaving the materials out. (Tes. 50-51.)

It is a matter of common knowledge I believe that the prices of fertilizer last year were very unstable, and that the 8-3-3 brands, which are largely used for cotton, sold at prices ranging from $24.00 per ton down to $17.50 per ton. I am advised that because of the keen competition between the fertilizer manufacturers the manufactured goods frequently sold at prices below the actual cost of the materials going to make up the completed fertilizer. The cash price of 8-3-3 goods this year is approximately $25.00 per ton, with very little if any variation in price therefrom. A much larger proportion of the fertilizer sold this year was on a cash basis than in previous seasons. The prices on fertilizer vary according to formula, but prices of all the different grades are higher this year than last. I don't know what has become of the competition that put it down last year; I presume the shippers will explain that. It is my information that the prices last year for the same class of fertilizer varied as much as $6.00 per ton. Assuming that the average haul on fertilizer was 100 miles the freight rate under the carriers' proposed scale for that distance would be $2.59 per ton, so that the maximum variation in price of fertilizer last year amounted, approximately, to 2½ times as much as the total freight cost. Concerning how the price of fertilizer is fixed and maintained: At a hearing before the So. Carolina Commission on January 7, 1925, Mr. Dashiell, of the Royster Guano Co., testified: "As far as the price of our company in concerned, the F. O. B. port price is taken to determine the price at an intermediate point, the freight from the port being added." My understanding is that the interior manufacturies deliver fertilizer at the various sections of the country served by them at the same figure for the same class of goods that is quoted by the price making port. I have made no study as to how the price of fertilizer is maintained by independent fertilizer companies, but apparently there was no

uniform price fixed by any of the fertilizer companies during the 1924 season. Doubtless the manufacturers will be willing to frankly discuss these questions while giving their testimony. (Tes. 51-53.)

[fol. 268] I file my Exhibit 10, showing the acres of improved farm lands in each Southern State for 1920, the value of farm crops, total consumption of fertilizer, consumption of fertilizer per acre, cost of fertilizer per acre, and the freight charges on fertilizer used on one acre, using carriers' proposed scale for the average haul of 100 miles. This statement shows that during 1923 the average consumption of fertilizer per acre in No. Carolina was 264 pound. It further shows the cost of fertilizer per acre to be $3.10 and the value of farm crops per acre at $50.71. The transportation hauls on fertilizer vary greatly. From the ports the haul is generally longer than from interior manufacturies. At this time, I am unable to state exactly what the average haul for Southern lines as a whole is; but in my opinion a fair average is 100 miles. That is why I used 100 miles for the average haul. Some manufacturers claim it is less than 100 miles. In one of the South Carolina cases manufacturers testified that the average was 85 miles for single line hauls and 102 miles for joint line hauls. I have had a statement prepared showing the movement of fertilizer and fertilizer material from Wilmington, N. C., which I file as Exhibit 11, and from which it will be noted that the average haul of the A. C. L. on fertilizer is 89 miles and on fertilizer material 111 miles. Combining both fertilizer and fertilizer material, the average haul is 97 miles from Wilmington. Having thus determined that the average haul is approximately 100 miles, the carriers propose for that distance the rate of $2.59 per ton. At the rate the carriers are now proposing on 264 pounds of fertilizer—which I said was the average amount used per acre in North Carolina—the freight cost for the average haul of 100 miles would be 34 cents, and on that basis the freight cost of the fertilizer used on 100 acres would amount to $34.00. If the freight rate were reduced say 10%, and even assuming that the farmer received any benefit therefrom, the maximum benefit that could be obtained on the 100 acre farm would be $3.40. However, you will understand that the average number of pounds of fertilizer used

on all improved lands might not convey a correct impression of the amount of fertilizer used on the farm products which most require the use of fertilizer. For instance, some of the improved lands may not have been fertilized at all. [fol. 269] More fertilizer is consumed in the production of cotton than any other crop in Southern territory, and from information secured from the No. Carolina Agricultural Department the average number of pounds of fertilizer used in the production of cotton in North Carolina during 1924 was 450 pounds per acre, the freight cost on which at the rate proposed by the carriers for a haul of 100 miles would be 58¢. On that basis the freight cost on fertilizer consumed on a 100-acre farm would be $58. A 10% reduction would result in a saving to somebody of $5.80. I most assuredly do not think any part of this, or any other reduction that might be made in the rates on fertilizer, would be passed on to the farmer. (Tes. 53-56.)

Fertilizer is, as stated, a low grade commodity when viewed from the standpoint of rates at which it moves. In value, it is higher than many commodities which pay the carriers much more revenue per car, and in the transportation of which there is no greater risk; in fact I might say considerably less risk. Nitrate of soda, for instance, is classed "inflammable" by the Bureau of Explosives, and all cars containing even one bag has to be tagged on both ends and both sides of the cars, and bills of lading have to show this information. I have never known of a carload to burn up from that inflammable material. I have never heard of one, but nevertheless that work is required of the carriers. I never heard of a case where a car had ever been set afire by nitrate of soda, but I believe that these rules are in effect by order of the Interstate Commerce Commission. Besides the solid cars of nitrate of soda, fertilizer factories ship small lots of nitrate of soda in about 25% of the cars. I file Exhibits 12 to 18, inclusive, showing the average revenue earning per car derived from the transportation of coal, cement, scrap iron, asphaltum, black strap molasses and building stone, from which it will be noted that the revenue per car on these commodities far exceeds the revenue per car on fertilizer. It will be noticed for instance that the revenue derived from transporting a carload of coal from Birmingham to Opelika,

Ala., a distance of 128 miles, is $86.70, while on fertilizer the revenue per car under the proposed scale would amount to $56.70. The price of fuel coal delivered in carload quantities at representative points in the Southeast and in the [fol. 270] Carolinas is approximatelly $3.75 per ton, not including the revenue of the purchasing carrier. We move coal in open top cars and fertilizer in box cars. During the fertilizer season, there is not a greater percentage of return loading on the fertilizer than on the coal; we have to return the cars empty to the fertilizer plants, because the fertilizer has to move rapidly, and if it doesn't move at the proper time, it can't be used on the soil. The highest grade of bituminous coal is delivered for domestic use in small quantities at prices not exceeding $10 per ton. Fertilizer, on the other hand, according to grade, will cost prices ranging from $25 to $40 per ton. Cement sells at $2.90 per barrel, or approximatelly $14.50 per ton. The revenue derived on a carload of cement for 100 miles is $72.63, while on fertilizer it amounts to $54.39. The revenue on a carload of scrap iron, under the rates established by the No. Carolina Commission, at average loading of 36 tons, will yield the carriers $82.80, as compared with $54.39 on fertilizer. Prices on scrap iron vary according to grade. During 1924 the A. C. L. sold 58,000 tons at an average price of $14 a ton. (Tes. 56-59.)

While it may be argued that the carriers carry much greater tonnage of the other commodities named than of fertilizer, it should be borne in mind that one of the principal conditions affecting the cost of transportation is the light or heavy loading of the equipment. In fact the heavy loading of equipment is one of the principal means through which the railroads are striving to reduce the cost of transportation. The carriers can never fully accomplish the result desired as to heavy loading on fertilizer because that commodity will not now, and never can, load much, if any, in excess of one-half the tonnage capacity of the modern car. The present carload minimum of 15 tons is not based upon transportation conditions, but is merely for the benefit of the small farmer who does not buy fertilizer in larger quantities. Of the gross weight of a car loaded with fertilizer to the average thus far obtainable, viz., 21 tons, the dead weight is approximately 50% of the total. Of commodities which load the modern car to capacity, the

dead weight is approximately one-third of the total weight. While it has been persistently claimed by representatives of manufacturers that the fertilizer requires no special [fol. 271] service for its transportation, this is very far from being correct. Quick movement of fertilizer is a necessity when the shipping season begins, and no two seasons are alike. For weeks prior to the time when it may be expected that the rush movement will begin, the entire operating department is instructed to direct the movement of empty equipment towards the fertilizer producing sections, and every available car that can be had is so forwarded—whether such car be a home or a foreign car. (Tes. 59-60.)

In times of car shortage it is necessary to supply cars for the fertilizer movement even at the expense of shippers of other classes of dead freight. A lumber mill, for instance, operates throughout the year. A fertilizer manufacturer, on the other hand, operates only a part of the year, but because fertilizer must be moved when offered, cars must be supplied and the traffic given preference, even though lumber be delayed. Embargoes issued against dead freight do not include fertilizer, which is classified in such cases with perishables. Where we have to place embargoes to let perishable fruits and vegetables go through, we let the fertilizer go through also. During the fertilizer season the whole department is keyed up to the situation, and the work of Superintendents, Trainmasters, Yardmen, and Conductors is closely scrutinized by managing officers from day to day. Special trains are frequently operated during the heaviest parts of the season both in bringing in empty cars and taking out loads. The fertilizer season is one of the most strenuous periods in the life of the Southeastern carriers, and the fact that fertilizer is handled so well, and generally without complaint, is partially due to the splendid cooperation which the superintendents of the fertilizer plants extended to the carriers. These superintendents will not claim that special transportation service is not rendered by the carriers in the movement of fertilizer. Next to perishable crops, fertilizer is the most expensive traffic that the carriers handle, requiring as it does the utmost diligence.

During the heavy movements of fertilizer from Charleston, for instance, there are employed in the switching of

empty cars to the fertilizer factories and the removal therefrom of loaded cars 7 extra engines and crews. The cost of these extra switching crews, yardmasters and clerks will [fol. 272] approximately $14,200 per month. The regular crews, operating 10 engines at that point, assist as far as possible in the handling of the fertilizer traffic. Outside, however, of the regular crews, the cost per car in switching fertilizer during the heavy months would approximately $4. Furthermore, the A. C. L. has 12 miles of yard tracks used exclusively in the handling of the fertilizer business at Charleston, the bulk of such tonnage moving, as it does, during the months of January, February, March and April. These tracks were constructed for the handling of the fertilizer traffic and would not otherwise be needed. The most of this traffic moves during January, February, March and April, but as between these months the peak movement varies. For instance, in 1921 the peak movement of 2921 cars from Charleston was in March, while in 1923 the peak movement of 3762 cars was in February. While January and April generally show the smallest movement, it frequently happens that April shows the second largest number of cars shipped. In April, 1923, there were shipped 671 cars while in April, 1924, there were 1,381 shipped. In April, 1920, 2,749 cars were shipped as compared with 1,052 cars in April, 1921. 1968 cars moved in January, 1920, while in January, 1921, there were but 400. In January, 1924, we handled out of Charleston 1674 cars while in January, 1925, only 508 were handled. These statements are made for the purpose of showing that while the movement cannot be anticipated, the railroads must be prepared at all times to handle the peak movement. Talking about the Southeastern carriers principally, fertilizer is the most expensive freight traffic that the carriers handled with the exception of perishable freight. Unless the conditions are entirely different, I am prepared to adhere to that statement in other cases which will come up involving other commodities. But it is a very expensive traffic to handle, for the reasons which I have stated. I should say it is more expensive than cotton; of course the risk there doesn't apply. There is a good deal of switching in connection with the handling of cotton at compress points, storage, etc. (Tes. 59-63.)

In my testimony just given with reference to the movement from Charleston, I referred particularly to the A. C. L. I presume the conditions on the Southern and the Seaboard are substantially similar to those on our road in [fol. 273] that respect, but those lines will probably talk for themselves on that point. The traffic I refer to is that which moves from Charleston by the A. C. L. and the conditions on the Southern and the Seaboard are similar to our own. The average detention of equipment used in the fertilizer traffic at Charleston is not less than 14 days. At the beginning of the season, in January, the A. C. L. commences the parking of equipment for the movement of fertilizer, and this parking is continued until from 400 to 600 cars are in the yards awaiting loads. Outside of the delay incident to the parking of cars, when cars are placed for loading until released at destination, the detention is approximately as follows: placed at fatcory on first day of the month, loaded on the second, moved to classification yard on second, forwarded on third, arrived at destination in So. Carolina on fifth, released on seventh, moved on eighth and returned to Charleston on tenth. The per diem charge for box cars used in the fertilizer business is $1 per day; I couldn't definitely say how many miles per day that averages per car, but of course it varies. The business will move, for instance, from Charleston into So. Carolina as far as Florence, on a special train, and there be distributed to the various branch trains, and it would be very difficult, I should think, to get at a fair average of what the delay would amount to. While the average may be 100 miles for the entire movement of fertilizer in the South, the haul from the ports is as a rule greater than the haul from the interior manufacturing plants. Based on this detention I have shown, and the per diem charge of $1 per day, the total per diem cost in connection with a carload of fertilizer from Charleston to So. Carolina points would be $14. We find that about 40% of the equipment used for fertilizer is foreign; of course that is all according to the necessities for our own equipment at home, sometimes we have to carry the cars, foreign cars for our own equipment, from points as far as Montgomery, Ala., to Charleston, in order to meet the situation, and very often we run special trains from Georgia to Charleston, when there is a shortage. This

last year we have been able to and have furnished a larger part of our own equipment than we have in previous seasons. (Tes. 63-66.)

[fol. 274] I have prepared a statement showing the mileage rates on fertilizer, carloads, as fixed by the State Commissions for application intrastate between stations on the A. C. L. in the states through which it operates and will file it as Exhibit 19. This shows the local rates authorized by the various State Commissions for use on the A. C. L. in the states of Virginia, North Carolina, South Carolina, Georgia, Florida and Alabama; also the average of these rates as compared with the carriers' proposed scale. The rates as they exist today are shown in all cases except as to So. Carolina and Alabama. In these states are shown the rates in effect prior to the reductions made last year, and which rates are the subject of complaint to the Commission in this proceeding. It will be noted that for a distance of 50 miles the rate proposed by the carriers is $1.80 per ton while the average of the state scales is $1.92 per ton. For 75 miles the rates proposed by the carriers is $2.14 as compared with the average of the state scales of $2.20. For 100 miles the rates proposed by the carriers is $2.59 as compared with the average rate of the state scales of $2.41. For 150 miles the rate proposed by the carriers is $2.93 as compared with the average of the state scales of $2.95. (Tes. 67-68.)

We asked the Interstate Commerce Commission to intervene in the South Carolina case; we are not complaining about the rates shown in this exhibit that are specified in So. Carolina. So far as the rates in this exhibit are concerned, they are higher in South Carolina than those which we are proposing in some cases. Generally speaking, the rates I have shown as applicable on the A. C. L. are also applicable over other southern carriers serving the same territory. The principal exception is as to Virginia, where the rates authorized for use by the Southern Railway are somewhat lower than those authorized for use on the A. C. L. and the Seaboard. I understood the question to apply specifically to the rates in those states through which the Atlantic Coast Line passes.

The rates in Eastern territory are invariably higher than the Royster scale. I file as Exhibit 20 a statement show-

ing the rates in effect on fertilizer from Baltimore by various Trunk Lines to points in Maryland, Pennsylvania and [fol. 275] West Virginia as compared with the Royster scale. This exhibit shows for instance that the scale the Southern carriers are proposing ranges from 65 to 75% of the rates that are now in effect from Baltimore by the Pennsylvania R. R., the B. & O. and the Western Maryland. For 15 miles, the Pa. R. R. charges $1.80 per ton while Southern carriers are asking for $1.24 per ton; for 51 miles the Pennsylvania charges $2.50 per ton and the Southern carriers are asking $1.92; for 124 miles the Pennsylvania charges $3.70 per ton while the Southern carriers are asking $2.70. The B. & O. earns $2.40 per ton for 33 miles—the Southern carriers are asking $1.58; for 131 miles the Western Maryland charges $4.10 per ton—the Southern carriers are suggesting $2.82. As will be noted, in no single instance is the rate on these Northern Trunk Lines as low as the Southern carriers are proposing. I have a similar exhibit showing the rates from Philadelphia to stations on the Pa. R. R. for distances ranging from 7 to 299 miles, which I will file as Exhibit 21. (Tes. 69-71.)

For the first haul of 7 miles the Pa. charges $1.80 per ton while the Southern carriers are proposing for that distance $1.02 per ton. The Southern proposal is 56.6% of the rate charged by the Pa. R. R. For 72 miles the Pa. charges $3.20 per ton—the Southern carriers are suggesting $2.14 per ton, or 67% of what is charged by the Pa. I have prepared another exhibit, covering the C. & O. and the N. & W.; we haven't got the R. F. & P. but we could furnish it if necessary; I think there is very little movement of fertilizer on the R. F. & P. I have made several statements of rates showing those now in use by the Northern lines compared with the Royster scale which I will file as my exhibits 22, 23 and 24. They are of the same general character as those previously described and show: Rates from Syracuse, N. Y., to stations on the N. Y. Central. Rates from Hagerstown, Md., to stations on the B. & O. Rates from St. Bernard, Ohio, to points in West Virginia. (Tes. 71-72.)

I will also file as my exhibits Nos. 25, 26 and 27, statements showing the rates on fertilizer between points on

the N. Y. P. & N. R. R.; rates from Lynchburg, Va., to N. & W. stations in Virginia and West Virginia, and rates be-
[fol. 276] tween C. & O. stations in Virginia compared with the Royster Scale. These exhibits show that, while in some instances the rates of the N. Y. P. & N., N. & W., and C. & O. are the same as, or lower than, the Royster scale, on the average, the rates are materially higher than that scale. I could probably furnish a good many comparisons of the same nature if necessary with the eastern rates. Those comparisons shown cover rates in the territory as to which there is a large and substantial movement and consumption of fertilizer.

I will file exhibit No. 28, showing rates on fertilizer, carloads, in effect between points in C. F. A. territory, which were fixed by the Commission in I. & S. Docket 965, (34 I. C. C. 254-302) as compared with the Royster scale. The rates charged in the territory named, as will be observed from statement, are much higher than the Royster scale, the latter ranging from 56 to 88 per cent of the former. The rates in C. F. A. territory briefly compared with the Royster scale are:

	C. F. A.	Proposed by Southern carriers
5 miles	160	90
50 miles	260	180
75 miles	280	214
100 miles	300	259
150 miles	360	293
300 miles	460	405

According to the American Fertilizer Handbook for 1924, the states of New York Pennsylvania, Maryland, Ohio and Indiana consumed during the year 1923, 1,403,710 tons of fertilizer.

I will file as Exhibit 29 a statement showing a number of the principal points in Indiana, Maryland, New York, Ohio and Pennsylvania in which fertilizer factories are located. The Interstate Commerce Commission has frequently expressed the view that the Southern Railroads are entitled to higher rates than in Eastern Trunk Line and C. F. A. territories. I will file as an exhibit a statement, No. 30, which

contains extracts from various decisions, one of which I quote as follows:

[fol. 277] "The Commission has frequently commented upon the more favorable traffic conditions obtaining north of the Ohio River than in the territory south of the river, resulting from greater traffic density and more favorable operating conditions north of the river, as a reason for the higher plane of the rates south of the river."

I do not have in mind any cases where on particular traffic the Commission has held the reverse. Of course there are some rates that are lower in the South than in the North; in fact, these rates on fertilizer that we are now talking about, but I don't remember that a decision ever sustained that position, that the rates should be lower. There are a number of commodities that take lower rates in the South than in the North. (Tes. 72-75.)

From what I have been saying it is evident that so far as the fertilizer is concerned the rates in the South are actually lower than they are in the East and in C. F. A. territory. This indicates to my mind that the fertilizer rates in the South are low, and proves the contention of the carriers during the past 25 years or more than the intrastate rates have been unreasonably low. The carriers themselves are strongly of this view, but they have been powerless to prevent the reductions that have continuously been made in these rates and this is especially true of Georgia, Alabama and recently of South Carolina. Fractions omitted, the population per square mile, according to the 1920 census, of the several Southern states, as compared with the bordering Northern states, was as follows: Virginia, 57; No. Carolina, 52; So. Carolina, 55; Georgia, 49; Alabama, 46; Florida, 18; Mississippi, 39; Louisiana, 40; Tennessee, 56; Kentucky, 60; Maryland, 146; Pennsylvania, 194; New York, 218, and Ohio, 141. (Tes. 75-77.)

From the given figures, the density of the fertilizer traffic in the South is greater than it is in the North or in the West. Generally speaking I should think that would influence the rates, but we are not asking as high rates on fertilizer as are now applicable on these Trunk Lines and C. F. A. Lines, for the reasons I mentioned, and

which have prevailed from the beginning, that is in our own minds, we have thought that fertilizer ought to go at [fol. 278] low rates, and we have always made them low, that is the reason they are so much lower than the Northern rates. Possibly it would have been a fairer and more proper comparison in stating the population per square mile in the several Southern states as compared with some of those more northerly to give the number of inhabitants per mile of railroad; I am perfectly willing to make that a part of this record; we are just seeking for the truth in this case and we are trying to present our side of it with that in mind.

I will file my Exhibit 31, showing a comparison of the Royster scale with rates in Texas, Arkansas, Oklahoma, Louisiana, west of the Mississippi River, and Missouri, from which it will be observed that the carriers' proposal is much lower than the average of the rates charged in all of the states named. Those are the intrastate rates. In Texas and Missouri the rates are in some cases slightly lower and in other cases slightly higher. Rates in the other states named are much higher than the Royster scale for all distances.

I will file exhibit 32 in substantiation of statements I have just made. This statement also shows that the carriers' proposed scale is, with slight exception, lower than the average of all the rates in the Southern states and the rates in bordering states. On this exhibit I have included all the Southern states—Tennessee, Kentucky, Mississippi and the whole of it. It appears here that the rates shown in Mississippi are the same as I show for Louisiana east of the river, and the latter are the Y. & M. V. rates; it also appears that there are certain Northern states where the rates are lower in some cases than we are proposing—such as Illinois—not in all cases. (Tes. 77-79.)

I have compiled figures showing the relative consumption of fertilizer and rates applicable thereon in the Southern States and all of the adjoining states in Eastern, Western and Southwestern Territories, which I file as exhibit 33. This statement shows the consumption of fertilizer in the states named for the year 1923, together with rates applicable in said states by carriers named therein, also the

average weighted rate based on the application of the state rates applied to the total tonnage consumed. The weighted [fol. 279] rate is shown in comparison with the rate which the carriers propose for general use in Southern Territory. This statement shows that the average weighted rate in all of the states named for 70 miles would be $2.17 per ton compared with $2.14 as proposed by the carriers; for 110 miles $2.55 as compared with $2.59 as proposed; and for 150 miles $3 as compared with $2.93 as proposed. In other words, this statement undertakes to show the weighted average rate on all fertilizer consumed in all the states named based on the movement being entirely intrastate and at rates applicable within each state. (Tes. 79-80.)

I have used here the total fertilizer consumption for each state and have for the purposes of the exhibit assumed that all of that tonnage moved under intrastate rates. As a matter of fact a very considerable tonnage moves under the interstate rates. In assuming the entire movement under the intrastate rates we are giving ourselves unquestionably the worst end of the showing, because the interstate rates would all be higher than the intrastate.

I suppose that Exhibit 33 is based on the rates as shown in Exhibit 32. I used the rates shown in the scale on Exhibit 32 to compile 33, so far as 32 shows it at all. I am not familiar with the various intrastate scales of Kentucky. I have not selected the C. N. O. & T. P. as the only one I have any knowledge of; we might have selected the L. & N. or the Southern or any other line; we just simply took one line. I am not aware that that is just about the highest fertilizer scale in the state of Kentucky. (Tes. 80-82.)

Cross-examination:

It is our purpose that the charges on fertilizer and materials throughout the South be unified and governed by a mileage scale. We suggest the Royster scale in connection with the minimum. It is our position that the charges should be on a mileage basis. Of course, I would say that if it is found necessary or advisable for some carrier in the Mississippi Valley for instance to suggest lower rates than we have suggested for the Southeast, that that would result in bringing down the rates below the Royster scale in the

Southeast, and in the Carolinas, we would strenuously object to it.

[fol. 280] "Q. Then, that is important to pursuing this inquiry. You will recall that in other pending proceedings the carriers have stressed the absence of any distinguishing circumstances which would warrant a different rate level in any part of the South. Well, now, do we understand that there is any change in the point of view which you have in regard to that?

"A. I do not say there is any change, but should there be any change, that would be our position, and the position of the carriers handling the great bulk of the fertilizer traffic."

We think there should be uniformity in the rate level throughout the South. We are not proposing rates for Trunk Line Territory now. We are suggesting in this case, so far as the lines I represent here are concerned, that the Royster scale be applied in Florida and to and from Florida. That is intended as a recognition of the propriety of the same rate level in Florida on fertilizer as throughout the remainder of the South. (Tes. 83-86.)

In one of my exhibits I have submitted a list of articles concerning which it is the conclusion of the carriers that such exhibit embraces all articles which property should be charged to so-called fertilizer rates; incidentally I would say that in this list there are really commodities which will never move within Southern Territory. Carriers now concur in the point of view that cottonseed meal is a proper article upon which the fertilizer rate shall apply. There is no suggestion that this is merely a temporary idea and that later we have in view taking cottonseed meal out of the fertilizer list. I do not recall the circumstances that you refer to that this is different from the position the carriers formerly took.

"Q. But you do recall that in practically every one of the State cases involving fertilizer, the carriers have sought to exclude cottonseed meal from the operation of the fertilizer rates, and before the Interstate Commerce Commission?

"A. Well, that was a straightforward proposition on the part of the carriers. You indicate that we might have in

mind the suggestion of the fertilizer rates on cottonseed meal here, and that later we might change our minds about it?

[fol. 281] "Q. Yes.

"A. I want to disabuse your mind on that fact."

Today, I don't know just what percentage of cottonseed meal is used for feed and what for fertilizer, but my understanding is that the great bulk of it is used as a fertilizer. (Tes. 86-88.)

I think it is a fair statement to say that the proportionate uses of cottonseed meal for fertilizer material purposes will vary from season to season, depending somewhat upon the costs of the ammonias which can be gotten from other sources of material. I am not familiar as to whether at this particular season there is a high-percentage of meal being used for fertilizer than has been the case for sometime in the past. My understanding is that cottonseed hulls are used as fertilizer material. That list, shown on Exhibit 8, is drawn from the Classification. Waste hairs and waste wools are not in this list. If hair is an important matter to you we are quite willing to include it.

The carriers agree to the idea that particularly the same charges should be applicable on the materials and the mixed goods. I think it is generosity on our part to include nitrate as fertilizer material. I want to remark incidentally that what is done in the Southwest, or Northwest, or the East, would not necessarily govern the Southern Territory; in other words, we are not fixing this whole question for the entire country.

"Q. No. In some parts of the territory, notably in the Carolinas, there are now these lower charges on certain materials than on the finished goods. For instance, the Royster scale, as I understand it, does not apply to a rather considerable array of materials, and your thought is that in the making of a new rate system, the separate charges on those materials should be put on the uniform fertilizer rate, as we may hereafter call it.

"A. And the Royster scale, as applied on the materials you speak of, less 10 per cent, when cars are loaded with 50,000 pounds or more." (Tes. 88-91.)

I don't think it would be advisable to impose a higher minimum on some of the materials than would otherwise be applicable merely by reason of a classification minimum. [fol. 282] In fact we have had a great many complaints from people who could not ship the minimum as today in the rate. We would like to get the minimum here of 40,000 pounds, but the present minimum, or Royster minimum, is 15 tons, or 30,000 pounds. The minimum loading of the cars is in excess of 20 tons now. We have always been fearful that the small farmer would be inconvenienced in the shipments if we established even 20 tons as the minimum. Our average today is 21 tons, talking of the Atlantic Coast Line. But, of course there was a great many shipments that are made on 15 tons, and in talking to small farmers they object to more minimum than to the rate. They do not think that the rate means anything to them, but they do think that the minimum is very vital. The reason is that the small farmer can only ship say 10 or 15 tons at a time, and it would be embarrassing to him and expensive to him to increase his load to 21. The average load of 21 I mentioned is the average of fertilizer and fertilizer materials, including everything.

In connection with the rates we are proposing as minimum the Royster scale, which carries a minimum of 15 tons. The present minima, and a lot of these fertilizer materials, is as high as 40,000 pounds—20 tons. We feel, as we have gotten the minimum heretofore, that there would be no reason for the shipper, why that should not be gotten hereafter, and regardless of the minimum, we will urge our fertilizer friends, including the factories and the farmers, to load as much above the minimum as possible. In Exhibit 8, if necessary, all the various minimum weights are to be disregarded. Of course we would like to have these minima on the fertilizer materials if we can get it, but if there is opposition to fixing these minima we will have to go along on the 15-ton minimum. Our proposal is the Royster scale, or 15 tons. We would like to see the minimum advanced, provided it would satisfy the people who use the fertilizer. Unquestionably from a transportation point of view it would be an economical thing to do. Of course there is this to say, and we recognize the fact that these fertilizer factories want as high a minimum as possible.

They want to sell as much fertilizer at one time as they can, but we have other people to satisfy as well as these people who are the principal complainants in this case. We have [fol. 283] got the farmers to satisfy and I do not know myself whether the farmers will be satisfied with even a 20-ton minimum. I think it would be extremely objectionable to them, to even advance the 15 tons. You take our case in South Carolina, for instance, the old scale—the old South Carolina scale, which is shown in one of my exhibits, was higher than the Royster scale, but the minimum was 10 tons in South Carolina, and 15 tons up to the Royster scale. When we undertook to make the reductions in the rates in South Carolina with the increased minimum, it created a terrible disturbance, in fact the South Carolina Commission first accepted the Royster scale, and later they determined that on account of the increased minimum they would have to retire from the position they originally took. And I refer you to these cases. Now, as questions in which we are probably more vitally interested than is the fertilizer factory. (Tes. 91-95.)

We would like to load our cars to 20 tons minimum, but I doubt very much if we could put into effect as a minimum, without considerable trouble on the part of our customers, and I I am not including in that sense the manufacturers, for they are our customers too. We would like to have a minimum higher than 15 tons on these materials which are customarily loaded considerably in excess of 15 tons. There can be no real reason for not prescribing a higher minimum than 15 tons on that range of articles where it can be done. If it is where it can be done, you have got to fix it one way or the other, you know. If you make a minimum of 20 tons, you have got to stand by that. Sometimes the fertilizer materials move to the farmer and he mixes his own fertilizer.

There are some of these materials which are imported, such as the nitrates and potashes. It is our suggestion that the domestic rate from the nearest port shall be applicable to the interior movement of those imported articles. As to movements of those imported materials from ports other than the nearest port, the carriers have decided on port equalization, the distance considered; using the domestic rate from the nearest port as the base. In some proper

measure our scheme contemplates at least a partial port equalization from the farther distant ports to a given destination, and generally speaking where the port equalization [fol. 284] is necessary of course it is very much less than the Royster scale. By equalization is meant that it makes a less charge than the scale itself would provide. That would be applied to all imported fertilizer materials. The equalization plan that we are suggesting would apply to any imported fertilizer materials. If there are 2 ports 100 miles from a particular destination in the territory of course they take the same rate. Generally speaking we have done this, which I think will illustrate the principle. On imported fertilizer material, we consider that traffic as moving from Europe, or whatever the point of origin may be, and that it is entitled to consideration, on that account, and we would make, for instance, from Jacksonville to Atlanta the same rates as from Brunswick and Savannah or Charleston. Now, we would not necessarily apply to intermediate points. When we get a shorter distant point, the rates from one port would be higher than from another. Take intermediate points, for instance, between Jacksonville and Atlanta, and between Charleston and Atlanta, that situation would differ to accord with the destination. Jacksonville to Waycross, for instance, which is an intermediate point between Jacksonville and Atlanta, would be higher from Charleston than it is from Jacksonville. The distance from Jacksonville to Waycross being 75 miles, and from Charleston about 210 miles. Yet, when you get to another distant point, you have to decide on a uniformity of adjustment. Taking Augusta, Ga., as an illustrative destination point: I would not suggest that the charge from Jacksonville would be the same as, say, from Charleston. It would be something higher than from Charleston, and mayhap less than the normal rate scale. I don't know that it could be set down in a rule by which the determination of how much less could be governed, absolutely applicable in all cases, but we are quite willing, and we are prepared to furnish, you the information as to what rates we propose. (Tes. 95-100.)

Before we undertook to make this check, I personally was under the impression that we could lay down a rule like that, and that we would not have to go into the detailed

checking every individual rate in the South, and I found that so far as I had tested it, that no uniform rule could be applied. Now, if you have a uniform rule that would en- [fol. 285] able us to solve a problem of that kind, I have no doubt that we, the railroad, would be greatly appreciative. I though myself that we could do that, and I suppose I was merely theoretical, as probably you are, in arriving at the conclusion. All fertilizer materials move on the average a greater distance than the manufactured fertilizer. I am inclined to think that the imported materials would move longer distances than the domestic, but I have made no calculations on it. 100 miles would not necessarily be the average on that. We gave the thought that there should be an attempt at partial equalization between two groups of ports to a given destination some consideration, but my understanding in the final check was that distance controls. I am stating my information on those things. I may be wrong about that. I think that distance was the predominating feature.

It will be convenient for me to make available the figures that I have worked out as to this equalization of ports on these imported materials. It is not the thought of the carriers that the new charges on imported material should be made shipside rates. You might call them gross rates, it seems to me. We will apply that as our transportation charge, and to that figure will be added the terminal charges. (Tes. 100-102.)

I am sorry to have to hesitate about so important a matter as the approximate gross freight revenue of my railroad, the A. C. L. You are probably more familiar with it than we are. The freight earnings for 1924 were $57,287,726.00. When I computed the proportion which the tons of fertilizer transported by your road bore to the tons of all freight, I did not at the same time compute the percentage which our fertilizer revenue bore to our total freight revenue. I think I can give you the approximate relation of the fertilizer revenue to the total; the fertilizer tonnage in 1924 was 6% and a fraction of our total tonnage. That is the same as 1/17th. The proportion that the fertilizer revenue bears to the freight revenue is 4.7. The approximate gross from fertilizer revenue of our line is about 2¾ million dollars a year.

Concerning fertilizer being the most expensive traffic we handled outside of perishables, I enumerated items connected with the installation of extra switching service at [fol. 286] Charleston, as illustrative, and the special service from Charleston. The handling of fertilizer from Charleston is substantially a seasonal matter, mostly all at one season, and somewhat in the fall as well. I was just telling out that there was an out-of-pocket cost of approximately $4 on account of our having to furnish 7 extra engines and crews for the handling of the fertilizer business. If we could handle this fertilizer traffic year after year, we would not require these extra facilities, extra switch engines at all, but we would not have to move it in a given time. Nobody knows, even your fertilizer people don't know when fertilizer is going to move.

Wherever we have to put on extra service, it means extra cost. I said we have had to put on 7 extra switching engines to handle this fertilizer business during the short period that fertilizer moves. If we had throughout the year the same average movement every month which moves for the months of January, February, March and April, we would have those 7 locomotives employed every month, and the cost would be the same. As to the situation at Charleston being typical of all places where fertilizer is manufactured: It is a question as to how much is moved. From some of the ports of course we don't move much fertilizer in the East, and we can handle that traffic without any extra expense at these ports, but Charleston is typical, I should say, of several of our ports. Wilmington, I should say, is very close to Charleston in that matter. Savannah, I should also say the same thing. The conditions at Jacksonville are pretty nearly the same as they are at Charleston; I went down there last week to inquire into that feature especially. What is regarded as extra service is not found by us in anything like the same degree at interior points as at the ports, because we do not handle the fertilizer tonnage in any such large quantities as we do from the ports.

As to some other conspicuous item in the nature of an extra expense connected with the handling of fertilizer in addition to what I have shown in my evidence: I mentioned, for instance, the additional 12 miles of tracks. Side tracks; you might call them main lines in one sense, that we have

provided to take care of this fertilizer business out of Charleston, and we have a main-line track, you might call [fol. 287] it, the Ashley River extension that runs parallel to our double track into Charleston, and the fertilizer factories built spur tracks from the Ashley River extension of ours. They built their own tracks from there, and the distance from—the length of these side tracks to the fertilizer factories will range, I suppose, from 2 to 500 yards; I am not very sure about the maximum. Whether it is called a side track or something else, it is simply a parallel track running in front of a long row of fertilizer plants. (Tes. 102-108.)

Then leading off from that are the little spurs right into the plants themselves. It is my understanding that those particular spurs are maintained by the fertilizer factories. We do the switching of the cars into and from those spurs. The equipment used is always box cars; we cannot use flat cars for fertilizer. In that respect fertilizer differs not at all from other classes of traffic, other than such as moves in open car equipment. Leaky roofs might be all right for some classes of traffic, in fact, for most of the heavy traffic, but it will not do for fertilizer; we have got to see that these cars are absolutely perfect. Cement cannot be put in cars with leaky roofs, but there are many commodities that the question of leaky roofs does not interfere with the movement. There is no order to that effect, but it is the practice that an outbound loaded car of fertilizer be returned empty to the place from which it first moved. Now, there is no return movement in the direction of Charleston for the empty car, and if we get the car back at all we have got to take it back empty, as a rule. We get that particular car back empty. We run special trains for the return of these empty cars into Charleston.

"Q. Now, is not that same thing peculiar to Charleston? It would not be true, for instance, as to Montgomery, Charlotte, of [or] Columbia, South Carolina?

"A. Well, to the extent that Montgomery is sufficiently large, it would be the same thing; we would have to move fertilizer from one point, regardless of what point you named. Now, in the same fashion that I am describing as to Charleston." (Tes. 108-110.)

Speaking of fertilizer materials, I could not answer if there has been more than one reduction in fertilizer rates [fol. 288] since the creation of the Florida R. R. Commission, but the witness who will testify for Florida will, of course, have all of that information with him. I think generally, though, Mr. Burr is correct. The Florida Commission has been especially fair in the matter of fertilizer rate adjustments, and on fertilizer materials it is just the reverse. In anticipation of the effective date of the R. R. Commission law of 1897, I could not answer as to whether it is a fact that the Florida carriers raised all rates in the State. The first Florida Commission was established before 1897, however, then abolished and re-established. As I recall it, the reason given to us for the establishment of the fertilizer material rates in Florida was to equalize the interior manufacturers with the port cities.

"Q. Well, it was a substantial reason, wasn't it, the port city had the advantage?

"A. I don't think so, Mr. Burr. The reduction on fertilizer materials in Florida was made many years ago, and the little business that is now manufactured—I mean the few tons of fertilizer that are manufactured in the interior of Florida is so insignificant that it has not had the effect desired, if that was the effect that you did desire." (Tes. 111-112.)

I think I can give you figures to show what it is. We have the traffic shipped from these interior points in Florida,—so small it is not included in our list. Tampa and Jacksonville are, I would say offhand, would ship 95% of the total fertilizer business in that State, as compared to these other smaller factories. Going back to the only reduction made in fertilizer rates in Florida for a quarter of a century—the rates the carriers made when the Commission was established—the Commission adopted our tariff to start with. I should say that our rates for 10 miles, for instance, were somewhere about $1.10 to $1.25 per ton, and the only reduction made in them was to bring them to about a dollar, and that reduction for the short haul just gradually faded out in a little while, and the rates for the longer distances are about the same as they were when you made them.

[fol. 289] "Q. They are now—I mean the base rates, without the plusses?

"A. Yes, I think that is more true of the State of Florida than any other State in the South." (Tes. 112-113.)

To be entirely frank when I made my general statement this morning indicting the State Commissions of the South with having taken radical steps with reference to the reduction of fertilizer rates, I did not have Florida in mind when I made the statement.

I am more familiar with the Southeast than I am with the Mississippi Valley and Florida territory from the Ohio River. That particular territory will be covered by some one else and I could not go into the detail of it. I never heard of the Kentucky Commission writing a decision on fertilizer rates. I never heard of the Tennessee Commission writing one—and yet they might have done so without my knowledge. To my own knowledge I never heard of it. You surprise me when you make the statement that they never treated fertilizer rates.

Exhibit 7 is a statement showing the consumption of fertilizer from the Southern States for the years 1913 to 1923, inclusive. I believe some of the figures for 1924 were available, but it was not the case as to all of them.

"Q. My reason for asking that question, Mr. Menzies, I notice considerable fluctuation in the quantities consumed in several of the States during the years from 1918 on down. Some of the States whose consumption had been greatly reduced were making a come-back, and I think it will be found that the figures for 1924 will be much better—reflect a much larger consumption than the 1923 figures do.

"A. That is for Mississippi?

"Q. That would include Mississippi, and there were other States I am informed, who also have increased their consumption very materially. Do these figures include the tonnage of cottonseed meal and hulls, Mr. Menzies?

"A. On fertilizer, we got these figures from the hand book, and we assumed that they are correct, but I do not know whether that includes everything or not—whether it includes cottonseed meal or not." (Tes. 113-116.)

[fol. 290] I don't know if they only reflect the tonnage of the compounded fertilizers consumed. I took them from

the fertilizer people, who are here to testify, and I suppose we will get the facts about these matters when they get on the stand.

I show the total consumption for 1923 in the Southern States as 4,220,807 tons and under the total for the United States, 6,647,308 tons. You add those two together to get the aggregate for the entire country.

"Q. Now, Mr. Menzies, your Exhibit No. 33 is a statement showing the weighted average of rates on fertilizer, carloads, applicable intrastate in Southern and border States, based upon the consumption of fertilizer in those States during 1923, compared with carriers' proposed scale. Now, in making up these figures, do you use only the scale used in the exhibit 32 on Mississippi?

"A. I just wanted to compare them and see—well, where these rates are used at all, they are same."

We just used this one scale of rates shown on Exhibit 32 in making up this weighted average—we used the State scales. Some States have different scales; we use one of them. We disregarded all specific rates in making up these figures. We think that if this statement is unfair at all it is against the carriers. We have taken the total consumption of fertilizer in each of the States for average distances, and multiplied the tonnage by the rate within each State, and then when we get the total tonnage in all these States, we divide that by the grand total tonnage of fertilizer, and you find in that way the average rate—the weighted rate. If the statement does not show cottonseed meal it does not reflect what the weighted rate on cottonseed meal is of course.

"Q. And if the rate that you have used here for 300 miles, of $2.93, and the rate for another road in a State for the distance is $4.00 per ton, why the Statement is of little value to the Commission, is it not?

"A. Well, I will let the Commission determine that question." (Tes. 116-118.)

I stated that the movement from interior factories in Florida was so insignificant that I had not even prepared [fol. 291] figures for the movement. With reference to what quarrel we have with Florida in view of that: We

don't want to establish the precedent. So far as Florida is concerned we may be quarreling about something merely on paper; then, if 75c is the proper basis for fertilizer rates in Florida, it would be argued it is the proper basis for fertilizer material rates in all the other States.

The last column on Exhibit 10 shows the freight charges on fertilizer used on one acre, based on the Royster scale—not dealing only with commercial fertilizer that has been manufactured at the fertilizer plant, not the fertilizer material. On the manufactured fertilizer every single commodity that goes into that has experienced a haul before it comes into the plant, except that which is delivered direct from the fertilizer plant to the interior by wagon, or otherwise, and there is a great deal of that done. All the phosphate and other materials that have to be imported or moved into Atlanta from other sections of the United States necessarily have to pay freight charges into Atlanta. Fertilizer material as a rule load heavier than commercial fertilizer.

"Q. I am not speaking about the weight of the load, I am talking about the distance only. The hauls actually on those raw products, than it is on the manufactured article, as I understood from your testimony this morning?

"A. I do not think there is any question about that. The movement of commercial fertilizer from Atlanta to farmers 85 miles in circumference, would not be nearly as great as the movement of phosphate rock from Florida to Tennessee, naturally." (Tes. 118-120).

Phosphate rock does not move at fertilizer rates. I want to show what the farmer has to pay. The manufacturer in Atlanta gets his raw products in from Savannah, and from Florida or from Tennessee, and other points, and shipping to Griffin, Ga., has to deliver at Griffin, Ga., as I understand it, at the same price that Savannah delivers to Griffin, Ga. He has to absorb whatever is necessary in order to deliver a fertilizer at Griffin at the same price that Savannah can sell it. That is my understanding, but all the farmers do not live at Griffin.

[fol. 292] By Com. Eastman:

"Q. Mr. Menzies, if I may interrupt here, the point, as I understand it, this exhibit simply shows the rates on the

finished fertilizer, and Mr. Martin makes the point that they are lower rates on fertilizer materials, going to the plants where the fertilizer is made, and that those rates enter into the cost of the product. Now, I gathered from your answer that the rate is based on the particular rate, and so far as the ports are concerned, there would not be that movement of fertilizer materials into the plants, would there?

"A. That is exactly correct. The interior manufacturer has to meet the conditions that he finds, and it is the same there, as I understand, in Mississippi, as it is in Georgia, or anywhere else in the interior." (Tes. 120-122.)

As to whether I mean to imply by this exhibit that the freight cost on fertilizer for fertilizing an acre of land in Mississippi for 1923 was only 6 cents: That is what the report shows, and I give the authorities. That is for all farm crops in Mississippi. They might use much more than that on cotton. I have really stated that on cotton in So. Carolina and probably in No. Carolina, that their average would be 450 pounds, but I am merely quoting these Government statements here, to indicate what the condition is in the different States. I should not be surprised if these averages are made up by taking the total number of acres of open farm land in Mississippi and dividing that by the total number of tons of fertilizer consumed. Of course on many of those acres they don't use any fertilizer at all. They are not used to fertilizer in Mississippi, apparently, anyway. I don't know whether Exhibit 10 includes cottonseed meal or hulls or not; you will have to confer with the fertilizer people about that, because I just copied their statement, as to the consumption of fertilizer. They may have included cottonseed meal and they may not. (Tes. 122-124.)

As to what sort of mileage we are going to use by applying a mileage scale of rates: We are going to use workable routes; that does not necessarily mean short lines all the time. We are not willing to be governed by the mileages adopted in the final decision of 13494.

[fol. 293] On Exhibit 8, page 3, I show an item, soil compounds, containing one or more ingredients. We are willing to include nitrates in that item. If it is stated here, we

intended to included it. It would be my opinion that we should include under soil compounds on page 3 a compound which would contain nitrogen and phosphate or some mixture of that sort, potash and maybe all three. It is the intention and purpose of the carriers to apply the new rate to cottonsed meal and others. (Tes. 124-126.)

(Witness excused.)

Mr. E. R. Gardner was called as a witness and, having been duly sworn, testified as follows:

Direct examination:

I am connected with the Southern Railway System lines as Commerce Agent. I have had about 15 years traffic experience with the Southern Lines. I have made special investigations in respect to the fertilizer rates in Southern Territory.

In my testimony I deal with certain general features, and then particularly with the situation in and into Carolina Territory. To be specific, with the rates—intrastate rates in South Carolina, the rates to and from South Carolina, and the rates on fertilizer and fertilizer materials from Ohio River Crossings to Carolina, and I will also deal with the situation with regard to the Southern Railway in Virginia, and also with the rates from Charleston, South Carolina, to Georgia points.

I have also certain testimony and rate comparisons going to the question of the level of the rates for application generally in this territory.

Statements were thereupon received in evidence and marked "Respondents' Exhibits Nos. 34 to 134, inclusive, Witness Gardner." (Tes. 127-129.)

My first Exhibit, No. 34, is an exact copy of a portion of the Manufacturers' Record for December, 1924, which gives a survey of the origin and development of the fertilizer industry in the South, as contributed by Mr. Whittle, secre-
[fol. 294] tary of the Soil Improvement Committee, of the Soil Improvement Association, at Atlanta. That exhibit,

as I stated is a history of the fertilizer industry in the Southern Territory.

In connection with that particular exhibit I wish to call attention to the first page, which is page 202 of the Manufacturers' Record, the second paragraph of that page, which I will read:

"But the tonnage of 1923 was of higher plant food content than for the year 1920; or for any previous year. So the fertilizer industry has more than recovered lost ground in the consumption of plant food units. In fact, 1923 marked the banner year in fertilizer history for actual plant food sold in the Southern States."

What I mean by that is that in prior years, for example, where the farmer would use 10-2-2, he is now using, say 10-3-3, or 10-4-4, or a higher analysis, with greater amount of plant food per ton. That amount of plant food that has been used by the farmer is greater than it was at the time the Royster scale was described, in 50 I. C. C. 34.

Turning to the next page, under the head of Soiling Methods. There has been some change this year, I understand, with respect to the method of soiling fertilizer. Prior to the present year, for several years past, the farmer has been able to buy, even in small quantities, direct from the manufacturer on a credit. This year, the farmer, if he buys in small quantities, must buy from the middleman, or a dealer, and the dealer is almost invariably paying cash. All that is hearsay.

It is my opinion, from inquiries sent out, that the farmer who does not pay cash for his fertilizer now by May 1st, say, and wants to go over, apiece, in the past, or for a time, that the difference between the cash price and the credit price for that length of time runs from 7 to as high as 10 dollars a ton; the information I have got would indicate that the credit price is generally about $8.50 to $10.00 higher than the cash price.

In connection with my next exhibit, No. 35, which is an extract from the American Fertilizer Magazine, of February 7th, 1925: I also call attention to the second paragraph of that exhibit pertaining to the plant food content of [fol. 295] fertilizer on 1924 account, and of previous years. It indicates, I may say here "any comparison between last

year's tonnage and that of any previous year is misleading on account of the higher grade of goods sold in every part of the country in 1924. A campaign for higher analyses is now bearing fruit, and if it were possible to report the plant food units for the two years, the increase in 1924 over the previous year would be at least 25 per cent instead of one-third of that amount."

I call attention to that particularly, if you please, because in subsequent exhibits which I will file, will be comparisons of the tonnage of fertilizer consumed in the various States in the United States. According to the record of the fertilizer interests and the official organ of the fertilizer interests, the plant food unit has a great deal to do with the consumption. Now, you will notice that exhibit also gives the 1924 tonnage for certain States. I was unable to get the 1924 tonnage for States other than that shown in that exhibit. (Tes. 129-132.)

Now, for 1925, I have made some investigaton from the State Departments of the various States, and for the fertilizer season of 1925, up to and including April 16th, there has been 740,277 tons consumed, while for the same period of 1924 the consumption was 617,038 tons. Virginia, up to April 15th, 1925, was 264,055, while 1924 was 261,753. South Carolina Agricultural Department declined to give me any statistics as to their state, but they did state to me that the 1925 tonnage consumed in South Carolina was approximately three and one-half per cent greater than for the same period in 1924. Alabama, taking the period ending March 31st, was 534,000, while for the same period last year was 440,000 pounds consumed. I was unable to secure any figures from North Carolina.

It is a fact that North Carolina, for example, consumes more fertilizer than any State in the Union. The consumption in Arkansas and the other States just west of the Mississippi River, by comparison, is very small, as shown by this statement. I have no statement that shows that for years prior to 1924.

My Exhibit No. 36 is a pamphlet published by the United States Department of Agriculture, Department Bulletin No. 1280, on the consumption of fertilizer mixtures from [fol. 296] concentrated materials, and gives the formulas for the various fertilizer mixtures on pages 14 and 15.

My Exhibit 37 is a report of the Federal Trade Commission of the fertilizer interests, published as of August, 1916. That is brought down to the later investigation made by the Trade Commission.

My Exhibit No. 38, I give the report of the Federal Trade Commission on the fertilizer interests, as of March 3rd, 1923.

From the American Fertilizer Handbook for 1924, I have recapitulated and shown in my Exhibit No. 39, the mixing plants and the fertilizer manufacturing plants throughout the United States. You will notice on page 2, 3, 4, and 5 of my exhibit I show the plants at the various points, and character of the plants. On page 5 is the definition for the various kinds of plants, that is manufacturing plants and dry mixing plants.

On page 1 of the exhibit I have recapitulated as between the Southeast, the Eastern Trunk Line, Central Freight Association and Southwest, and also shown separately the manufacturing plants from the dry mixing plants. That is in the Southern Territory there are 190 manufacturing plants, while in the 365 mixing plants, of the 555 plants all-fold. That is, of course, the record from the American Fertilizer Handbook for 1924.

There are two typographical errors in the recapitulation. That should be "dry mixing", instead of "dry mining." Second, "Southeast" should be "Southwest."

In the Eastern Trunk Line Territory there are 71 manufacturing points, 105 dry mixing plants and 176 plants all told.

Central Freight Association Territory, there are 48 manufacturing plants, 16 dry mixing plants and 64 plants all told.

I note from that they have through error included Kentucky in the Central Freight Association group, and according to my judgment, which should be in the Southeastern Group, but the figures for Kentucky are so small, it won't affect the showing I am endeavoring to make by that exhibit. (Tes. 132-135.)

In the Southwest, the 9702 fertilizer scale territory, or at least a part of it, there are 12 manufacturing points, 28 dry mixing plants, a total of 48.

[fol. 297] My exhibit No. 40 is a list of the Class 1 roads in the Southern Territory, fertilizer tonnage transported for the year 1923, and the ratio of the fertilizer tonnage to total tonnage transported. Atlantic Coast Line, you will note, ranks first in the handling of fertilizer tonnage in the South, their fertilizer tonnage, according to the figures for 1923—this is fertilizer tonnage transported, not originated—6.35 per cent. The Southern Railway ranks second; the Seaboard third; Central of Georgia fourth; and the Louisville & Nashville fifth. Taking the Illinois Central Railroad for example, for that year that entire system, both north and south of the River, handled only approximately 186,000 tons; the Y. & M. V. Railroad handled for the year 1923, according to their annual report, 20,717 tons, and the Mobile & Ohio Railroad, 88,137 tons. The New Orleans & Northeastern, 17,607 tons. So, apparently the movement in the Mississippi Valley is not comparable with that in the Southeast, or particularly the Carolina territory.

My Exhibit No. 41 is a statement of the fertilizer tonnage handled by the Southern Railway Company, years 1907 up to and including 1924. That also is the fertilizer tonnage transported, and not the fertilizer tonnage originated. When you take into consideration the information shown in my Exhibits Nos. 34 and 35, as to the plant food content of a ton of fertilizer today as compared with the previous years, it is my judgment that the fertilizer tonnage, especially for the Southern Railway today, is back to normal basis, and above normal.

I did not have figured the tonnage out on a ton-mile basis. If figured on a ton-mile basis, because of the lower average haul on fertilizer, the percentage would, I believe, be slightly less than the ratio shown in that exhibit. Now, the average haul on the Southern Railway in South Carolina, I recall single line, is 112 miles, and in North Carolina it was approximately 100 miles. I have tabulated that information in connection with the State cases.

My Exhibit No. 42 is a statement of the number of cars of fertilizer handled by the Class 1 roads in the Southern Territory for 1923 and 1924. Now, the purpose of that exhibit is to show the average loading of fertilizer and fertilizer materials for the various lines, and for the Southern

Territory as a whole. Now, in subsequent exhibits which I will file, I have used in arriving at per car and per car [fol. 298] mile revenue, 23 tons, which is the average loading of the Southern Railway for 1924. That is, the cars transported. For the entire Southern Territory on carload shipments of fertilizer and fertilizer materials, originated, the average loading in 1923 was 22.3 tons, while for 1924 it was 22.4 tons. Now, as to the carload shipments of fertilizer and fertilizer material transported, the average loading for Class 1 roads in the South was 23.6 for 1923, and 23.3 for 1924. So even with a 15-ton minimum, we are securing an average loading substantially in excess of the 15-ton minimum. So, even if the minimum was increased to 20 tons—40,000 pounds—our average loading for the Class 1 roads in the Southern Territory would be above the 20 ton minimum. (Tes. 135-138.)

In other words, so far as any minimum in transportation is concerned, the conclusion that I have reached from that exhibit is that the increase in the minimum from 15 to 20 tons would not mean anything, because your average is now well above 20 tons.

If the minimum was increased to 20 tons, our average loading today on fertilizer is 23 tons, the minimum would not apply—20-ton minimum would not apply, the actual load of 23 tons would apply. Now, we do have some sections that move less than 20 tons minimum. I have particular reference to the South Carolina situation. Up till recently the South Carolina rates were on the ten (10-ton) ton minimum. At least, for a percent of the tonnage coming out of Charleston, for example, say nitrate of soda, a very high-grade commodity, moving in less than 15-ton lots. Those exceptions, and 20-ton minimum, with an average loading of 23 tons, the freight charges would of course be based on the actual loading. Wherever the actual loading is now less than 20 tons, then to the extent that the minimum would be made 20 tons, it would affect the existing average loading.

Taking the plants at points like Charlotte, North Carolina, interior plants, where those statements have been compiled for all of those fertilizer factories, their average loading now is well above 20 tons. The intrastate average loading in South Carolina was 20 tons and above.

"Q. Now, while we are on this proposition, in connection with a minimum, you take other articles which are [fol. 299] carried under the fertilizer list, where the minimum is today in excess of 15 tons, you recall the statement of Mr. Menzies in that connection. As to these commodities which can easily load heavier, and there is no commercial necessity for it, it is not the purpose of the Southern Railway lines in this proceeding, to reduce the minimum on those commodities?

"A. It is not; no, sir. The statement Mr. Menzies filed, showing the articles on which the fertilizer rates are to be applied, varies with the minimum shown in that exhibit, or shown in the exceptions to the classification. It is substantially the list that applies in connection with the Royster scale, which was forced on us by the Commission in its decision in 50 I. C. C. 34. And we purpose, in connection with this proceeding, to apply the Royster scale to the rest of the articles, being the third Royster scale, and the minimum weights shown in Mr. Menzies' exhibits." (Tes. 138-140.)

It is our purpose, of course, as stated here, to apply these rates on cottonseed meal, but we certainly do not want to stand committed to the proposition that from now on, regardless of what conditions are, that we are eternally going to apply fertilizer rates on cottonseed meal. In the Consolidated Classification Case, it will be recalled that the Southern Carriers proposed the feed rates on cottonseed meal. Personally, I think that is proper. I don't want it understood that we are committed here to apply the fertilizer rates on cottonseed meal forever and forever. We might find in another year, or five years, or in a few years it will be proper to apply something different from the fertilizer rates on cottonseed meal. And, the Commission may not accept the carriers' proposition in this particular case on that, may prescribe something higher on cottonseed meal, we don't want them to have the understanding that we want to accept it. It may find some demand among the farmers in South Carolina territory particularly for a lower minimum, that Mr. Menzies said that he found in his territory. They do want a lower minimum on fertilizer, particularly to take care of the nitrate of soda moving from Charleston, but that tonnage is com-

paratively small compared to the entire tonnage, but the [fol. 300] farmers have approached us, and we have had considerable difficulty in South Carolina in putting the minimum up to 15 tons there—the fertilizer interests were very lenient in the South Carolina case, they did propose 40,000 pounds minimum, but on account of the agitation of the farmers—they just could not take advantage of it. The State Commission realized the situation, also the carriers, and we did not press that 40,000-pound minimum.

In so far as these hearings are concerned, it is true that we have had some difficulty in getting the farmers' point of view. For example, we had at least three hearings, at least before the South Carolina Commission, and those hearings were held. We also had very extensive hearings before the North Carolina Commission. That was advertised.

In all those hearings before the South Carolina Commission and before the North Carolina Commission, it is my understanding that not a single farmer, or a single farm organization, appeared at either one of those hearings, and I participated in both hearings.

I have not heard of any dissatisfaction of the 20-ton minimum applying in Alabama at this time. I have made no special investigation of the Alabama situation as to the minimum weight. (Tes. 140-142.)

My next Exhibit is 43, which is similar to the one filed by Mr. Menzies, and gives the consumption of fertilizer and fertilizer materials for 1916 to and including 1923, and taken from the American Fertilizer Handbook for 1924. It may be well, in connection with this exhibit, however, to call the attention to the consumption of fertilizer in Missouri, Louisiana and Arkansas. My purpose in doing that is, I expect to comment on the Memphis-Southwestern Scale, Docket 9702, in this general territory, in connection with which that scale applies. You will note that the consumption of fertilizer, in what I determine as the 9702 territory, is comparatively nothing as compared with either North Carolina, for example, where the Royster scale is applied generally.

In my Exhibit No. 44, I have shown consumption of fertilizer and fertilizer material in the Southern States for the 12 years ending 1923, compared with the 1924 tonnage. [fol. 301] The recapitulation at the bottom of the exhibit

shows the relation of the 1924 tonnage to the tonnage separately for the years 1924 and 1923, and then for the average of the 12 years, 1912 to and including 1923. For example, Alabama, in 1924, the tonnage was 104.3 per cent of the 1912 tonnage, or 4.3 per cent greater than the 1912 tonnage, and for the average for the 12 years, the 1924 tonnage consumed in Alabama was 150.7 per cent of the tonnage consumed for the average of those 12 years. You will notice from that exhibit that Georgia is the only State that is behind in the average consumption, 1924, as compared with the average of the 12 years. Now, when we take into consideration that the fertilizer moving today each ton of it contains a greater plant food value than in previous years, I think it is safe to say that even the fertilizer consumption in the State of Georgia is above or equal to normal. (Tes. 142-144.)

It is another fact that with respect to the fertilizer in Georgia and South Carolina, that those States were especially hard hit by the boll weevil.

My next exhibit, No. 45, is a statement of production and consumption of fertilizer in the United States for the years 1919 and 1921. I have chosen those two years because 1919 and 1921 are the only years that I have been able to secure any production figures, and they were secured from Department of Commerce, census of manufacturers, 1921 publication. The purpose of that exhibit is to show, for instance, the State of North Carolina in 1921 produced 550,206 tons of fertilizer, and fertilizer materials, and consumed 695,542 tons. Necessarily they had to go out of the State to supply their local consumption, or the consumption in that State. The purpose of that exhibit is to show just what territory, and what States consumed considerably more fertilizer and fertilizer materials than they do actually produce.

My next exhibit, No. 46, is a map, showing the location of the fertilizer plants in the United States. That map was taken from the publication of the Agricultural Department, and shows the plants of 1918. Now, you will observe from that that the plants are located in the Carolina Territory and in Georgia, with plants at Eastern points, Baltimore,

[fol. 302] Maryland, and Pennsylvania points, as well as New York and New England points.

In my next exhibit, No. 47, there is also a map taken from the Department of Agriculture Bulletin, showing commercial fertilizer produced during the year ending June 30th, 1918. The black circles shown on the map vary as to the amount of fertilizer produced at the points in the territory where the circle appears. I call particular attention to the circle at and around Baltimore, Maryland. Baltimore is one of the biggest producers of fertilizer and fertilizer material in this country. It is a fact that Baltimore, Maryland, is the largest single producing point of fertilizer and fertilizer materials in this country. (Tes. 144-145.)

My Exhibit No. 48 is a copy of a map filed by Mr. Harper, director of Soil Improvement Committee of the Southern Fertilizer Association, showing relatively the farmers using fertilizers, percentage by counties, for the Eastern Cotton States. Then, I call your attention to the fact that the heavy consumers of fertilizer, farmers using fertilizer, are located particularly in the Carolina Territory, where the Royster scale is now applied, or higher than the Royster scale.

Having particular reference to the State of Mississippi, the principal consumption in the State is in the Southern part, near the seaboard. If it be true that the price of fertilizer to the farmer—if it be true that it is determined by the rate from the nearest port, irrespective of the point from which the fertilizer is shipped, it would seem from that map, and from the facts which you have stated that the rate applying into Mississippi points is generally a short distance.

My Exhibit No. 49 is another map or chart, prepared by Mr. Harper, of the Southern Fertilizer Association, showing the amount spent for fertilizer by counties for the Eastern Cotton States. The figures are shown for 1920, as the exhibit will show. Again, the amount spent for fertilizer in the Carolinas stands out very prominently. Mississippi, Mr. McGehee, as indicated on my previous exhibit, is negligible.

I will refer to the various rate adjustment territories in the South. These territories will probably also be re-

[fol. 303] ferred to by witnesses who will follow me. In order that the Examiner and the Commission may have a bird's-eye view of these territories, I wish at this point to file my Exhibit No. 50, which outlines the Carolina Territory, the Southeastern Territory, divided as between the Atlanta sub-territory and the Montgomery sub-territory, also the Mississippi Valley Territory. (Tes. 145-147.)

Generally speaking, the Mississippi Valley rate adjustment territory is a narrow wedge of territory lying east of the Mississippi River and on and west of the lines of the N. C. & St. L. Railway from Paducah, Kentucky, to Paris, Tennessee, thence via the L. & N. Railroad to Jackson, Tennessee, thence via the M. & O. Railroad through Meridian to Mobile, Alabama, including also Columbus and Aberdeen, Mississippi, lying just east of the line of the M. & O. Railroad, and including also Helena, Arkansas, on the west bank of the Mississippi River. It will be observed that the Mississippi Valley rate adjustment territory comprises a small part of Western Tennessee, practically the entire State of Mississippi, that part of Louisiana lying east of the Mississippi River and a small portion of Southwestern Alabama lying on and west of the M. & O. Railroad.

The Southeastern rate adjustment territory is more extensive, and lies just east of the Mississippi Valley rate adjustment territory. On the map it is shown as that territory lying east of the line of the M. & O. Railroad from Corinth, Mississippi, to Mobile, Alabama, and on and south of the Memphis Division of the Southern Railway from Corinth to Chattanooga, including Chattanooga but excluding Corinth, south of a line running via the Southern Railway from Chattanooga to Cleveland, Tennessee, an imaginary line from Cleveland through Murphy, North Carolina, to Walhalla, South Carolina, and thence south of the lines of the Blue Ridge Railroad, Southern Railway and Atlantic Coast Line Railroad, through Seneca, Anderson, Belton, Abbeville, Greenwood, Newberry, Alston, Columbia and Wilmington. In a general way the Southeastern rate adjustment territory includes practically the entire State of Alabama, all of the States of Georgia and Florida, the large- portion of the State of South Carolina and a small portion of eastern Tennessee. (Tes. 147-148.)

[fol. 304] By Com. Eastman:

"Q. Now, that is not the way it is shown on the map, as I read the map. Would not the full lines bound the Southeastern Territory, the broad white lines?

"A. East of the M. & O. Mobile, up to Paducah.

"Q. Yes, but you were simply describing the part of the Southeastern territory which is embraced in the Montgomery sub-territory and the Atlanta sub-territory?

"A. Yes, sir; I was including that. I was trying to differentiate between the Atlanta sub-territory and Montgomery sub-territory in the Southeast.

"Q. You were not defining the entire Southeastern Territory?

"A. In a general way; yes, sir.

"Q. Well, that extends up into Tennessee, does it not, according to the map there?

"A. According to the map, it does; but the definition I gave is a correct definition for the Southeast. That line, technically speaking, Mr. Commissioner, between Kentucky and Tennessee, is erroneous, the Southeastern line ought to be the line of the Southern Railway, Memphis Division south of that."

We do not include in the Southeast this part that I have described and termed Carolina Territory, south of Walhalla line; that is the Carolina Territory; sometimes for rate-making purposes, Walhalla is included in the Southeastern rate adjustments.

"Q. The way you gave your definition, I understood you to say it included that territory. The way you read it, you wound up by saying it included the greater part of South Carolina.

"A. Just a small portion of the State of South Carolina and Tennessee. I should have said a small portion.

"Q. You did say large, though.

"A. I did." (Tes. 148-149.)

The Southeastern Territory, it will be observed, is divided into two sub-territories for rate-making purposes, as far as the adjustment from the Ohio River, etc., is con-
[fol. 305] cerned, the Atlanta sub-division and the Mont-

gomery sub-division. The Montgomery sub-division lies east of the Mobile & Ohio Railroad, and on and south of the Memphis Division of the Southern Railway from Corinth, Mississippi, to Decatur, Alabama, including Decatur but excluding Corinth, and on and west of the Louisville & Nashville Railroad from Decatur to Birmingham, the Central of Georgia Railway from Birmingham to Columbus, Georgia, and the Chattahoochee and Appalachicola Rivers from Columbus, Georgia, to the Gulf. The Atlanta sub-territory includes the remainder of the Southeastern Territory and lies just east of the Montgomery sub-territory.

The Carolina territory lies north and east of the Southeastern territory and south of the main line of the Norfolk & Western Railway from Norfolk through Lynchburg and Roanoke to Bristol, Tennessee, thence via the Southern Railway, Knoxville Division, from Bristol to Chattanooga. Although the West Tennessee territory, including Knoxville and Bristol, is shown in the Carolina rate adjustment territory, nevertheless, it is a fact that, generally speaking, for rate-making purposes the Tennessee Territory north of Chattanooga is usually included in the Southeastern rate adjustment territory.

It is a fact that the significance of those groupings at the present time relates to a great extent to rates from Ohio River Crossings, especially as far as the Atlanta and Montgomery sub-territories go, but it is not correct as to the Carolina Territory, because the Carolina Territory—that definition applies to a great extent to the East from the Southeast to Carolina, and as to the Associated Railways Exception Sheet Classification in the Carolinas, and general adjustments of that sort, but it is true that the Montgomery and Atlanta sub-territories, applies generally at the present time in connection with the Ohio River adjustment. That is true also as to this Carolina Territory south of Walhalla line, which is sometimes called Carolina sub-territory. (Tes. 150-151.)

My Exhibit No. 51 is a comparison of rates which have been prescribed or approved by the Commission on fertiliser for single line application, compared with the North Carolina scale, or Royster scale, or the scale which the car-
[fol. 306] riers are proposing in this proceeding. Similar to Exhibit filed by Mr. Menzies—well, I won't take up any further time commenting on it—although I would like to

call attention to that Meridian case, wherein the Meridian interests in that case requested the Commission to prescribe for application in the Meridian case the Royster scale, 50 I. C. C. 34; the Commission held that transportation conditions did not justify the Royster scale in the Meridian territory, and prescribed higher than the Royster scale for that territory.

Exhibit No. 52 is similar to 51, only applying to joint line hauls.

It is a fact that after the Meridian case was decided, and when the rates were suspended, and came back before the Commission, that at that time the carriers had determined to apply the Royster scale, and that the scale which the carriers then voluntarily proposed in the Meridian case was substantially the Royster scale, with just a mere difference in gradation. It was substantially the Royster scale, only several of the mileage blocks had been changed to conform to what the carriers thought was proper at that time. My exhibit shows lower rates in the Meridian case than in the Royster case, for 85 miles. That is the scale that the carriers permitted, and which the Commission suggested for application in the State of Georgia. That is primarily the scale which the carriers recommended for the Meridian case. It is substantially the Royster scale.

As to how it happens that the Royster scale begins at 35 miles: The Royster scale was prescribed for application from Norfolk, Virginia, to North Carolina points, and the mileage under 35 miles became the Virginia intrastate scale, therefore, there was no necessity for prescribing rates for distances between 5 and 35 miles, because it would have been the Virginia intrastate traffic. The Commission never prescribed rates for shorter distances than 35 miles. Not in the Royster case, they do not, no sir; but throughout my exhibits I have used for the shorter distances under 35 miles, the North Carolina Commission's rates for those distances because the scale which the Interstate Commerce Commission prescribed in the Royster case was identical to the North Carolina intrastate scale. So, it may be mis- [fol. 307] leading somewhat in my exhibits when I refer to the Royster scale for those shorter distances. (Tes. 151-153.)

In my Exhibit No. 53 I have made an exact copy of the Supplemental Fourth Section Order 8945, issued by the Commission in connection with the Goldsboro Case. It is true that the Commission in the Royster case, or the Goldsboro case, did not specifically prescribe the Royster scale for application from North Carolina to South Carolina, or from North Carolina to Virginia, but it is also true that in connection with this Fourth Section end of the Goldsboro case the Commission denied the carriers relief even by the short lines, or any other line, unless they did apply the Royster scale from Wilmington to South Carolina, and from Wilmington to Virginia, so it is reasonable to say that the Commission did by that Fourth Section order prescribe as reasonable rates the Royster scale from Wilmington to South Carolina points, and from Wilmington to Virginia points. In the formal complaint in that case, the rates from Virginia and South Carolina points were not involved. The Fourth Section application covering South Carolina and Virginia was cited in that case, and the carriers—Southern Railway particularly, was denied any Fourth Section relief at all, and then when we filed application with the Commission to secure Fourth Section relief, they refused to give it to us, unless we did apply the Royster scale from Wilmington, to South Carolina, and from Wilmington to Virginia, so obviously it cannot be said that the Commission did not in that Fourth Section application prescribe the Royster scale from Wilmington to South Carolina and from Wilmington to Virginia. The rates are on that basis today. (Tes. 153-155.)

Exhibit No. 54 is comparison of rates which the Commission prescribed on fertilizer from Mount Pleasant, Tennessee, to Mississippi points increased under the general increases of 1918, and 1920, reduced under Docket 13293, compared with the Royster scale, simply increased and reduced.

Exhibit No. 55, I have shown the Southern Railway Carolina Fertilizer scale, which scale you can use as a standard for fertilizer traffic east of Atlanta to North and South Carolina, and in that portion of Virginia south of Lynch-
[fol. 308] burg. It is true there are many commodity rates in that territory that are on the Third Royster Scale basis. The point I wish to make here is that you will observe that

the scale is substantially the same as the scale which the Commission fixed in the first Royster scale. In fact, following the first Royster Case we did establish that scale for application in the Carolina territory. Those rates today are higher than the third Royster scale, you will note by the comparison. Now, as I indicated—I do not want the inference left that all of the North Carolina traffic is moving on that scale, because it is not a fact—specific commodity rates that are slightly higher than the Royster scale, and many of them the same as the Royster scale.

I will now deal with the adjustment of rates on fertilizer and fertilizer materials to, from, and between points in South Carolina. I will also deal with the adjustment from Ohio River Crossings to Carolina Territory, from Charleston to Georgia points, and will explain the situation as to the Southern Railway rates in the State of Virginia. (Tes. 155-157.)

The rates from Charleston, South Carolina, to South Carolina destinations prior to March 15, 1924, at which time the South Carolina Commission reduced the intrastate rates on fertilizer, reflect the level of rates prescribed by the South Carolina Railroad Commission in their Circular 135 of November 1, 1909, which circular was issued following court litigation, and represents a compromise between State authorities and the carriers. On March 15, 1924, the South Carolina Commission reduced the intrastate rates in South Carolina and on March 8, 1925, ordered a further reduction in the South Carolina intrastate fertilizer rates, which latter reductions, however, were prevented from going into effect by orders of the Court. As far as the South Carolina situation is concerned, I expect to deal with that later on in my testimony, explaining in detail the various changes in the South Carolina rates and the results brought about by such changes.

From Savannah, Georgia, to South Carolina points, because of the competition between the South Atlantic Ports of Savannah and Charleston, South Carolina, the carriers serving Savannah have found it necessary in the past to [fol. 309] maintain a competitive adjustment from Savannah to South Carolina points which would place Savannah in position to compete with Charleston for South Carolina

traffic, the rates from Charleston being controlled by the South Carolina Railroad Commission. The present rates from Savannah to South Carolina points reflect, to a great extent, the mileage scale of rates in effect and prescribed by the South Carolina Railroad Commission prior to March 15, 1924. For example, from Savannah to Aiken, South Carolina, 128 miles, the present rate is $3.04, which is the South Carolina scale prior to March 15, 1924, for that distance. To Allendale, South Carolina, 72 miles, the present rate is $2.25, which also is the South Carolina scale prior to March 15, 1924, for that distance. To Bamberg, the rate from Savannah, Georgia, for 112 miles, is $2.82, which also is the South Carolina Commission scale prior to March 15, 1924, for similar distances. To many points, especially for the longer hauls, the carriers were not willing to observe the South Carolina Commission made rates in adjusting the rates from Savannah, Georgia, and to those destinations a relative adjustment was made following the reduced rates of the South Carolina Commission in 1909, placing Savannah on a competitive basis with Charleston. The Savannah interests have steadfastly maintained that because of the parity on rates on fertilizer as between Charleston on the one hand and Savannah on the other to certain Georgia destinations that the carriers should accord Savannah to South Carolina long haul destinations the same rates that are operated from Charleston under the orders of the South Carolina Railroad Commission. The carriers were not willing, even for competitive reasons, to apply the long haul rates of the South Carolina Commission which were entirely too low from Savannah and made the adjustment from Savannah on a relative basis with respect to the intrastate rates from Charleston. In this connection, it will be noted from my Exhibit No. 56 that the rates from Savannah, Georgia, to South Carolina points are the same, in some instances, as the third Royster scale, and are in no case lower than the third Royster scale. It will be also observed that the same situation is true as to the rates from Charleston prior to March 15, 1924. In other [fol. 310] words, the rates from Savannah to South Carolina destinations have in the past been permitted to be controlled because of the competition between Savannah and

Charleston by whatever rates the carriers were forced to maintain from Charleston. (Tes. 157-159.)

Augusta, Georgia, is located immediately across the Savannah River from the State of South Carolina. Hamburg and North Augusta, suburbs of Augusta, are in fact located in the State of South Carolina. Because of this situation and because of the fact that traffic from Augusta to South Carolina destinations could be drayed or handled to North Augusta or Hamburg and be accorded the rates prescribed by the South Carolina Commission on intrastate traffic, the carriers have found it necessary to accord in the past rates from Augusta, Georgia, to South Carolina destinations on classes and commodities the same as contemporaneously maintained by order of the South Carolina Commission on South Carolina intrastate traffic. Competition between Augusta and the South Carolina jobbing points also had its effect upon the application of the South Carolina intrastate level of rates from Augusta to South Carolina destinations. Prior to 1924, the rates on fertilizer from Augusta, Georgia, to South Carolina points were mile for mile the same as the rates applicable intrastate in South Carolina, and the same as the mileage scale of rates prescribed by the South Carolina Commission in effect prior to March 15, 1924. As I will indicate in my testimony later on, the South Carolina Commission issued a circular in 1923 ordering in the third Royster scale for application intrastate in South Carolina. Following the issuance of this circular, some of the carriers operating from Augusta did reduce many of their rates so as to conform with the third Royster scale, or to basis of the scale contained in the order of the South Carolina Commission, which, as I have indicated, was in fact on basis of the third Royster scale. It is true that before the third Royster scale became effective in South Carolina the South Carolina Commission's order was withdrawn.

It will be observed from my Exhibit No. 56 that the rates from Augusta, Georgia, are either on the Royster scale or [fol. 311] are higher than the Royster scale, reflecting, as I have indicated, the rates in effect on South Carolina intrastate traffic prior to March 15, 1924.

Rates from Atlanta, Georgia, to South Carolina points reflect mileage scales that were in effect prior to the decision of the Commmission in the first and third Royster cases. The Atlanta rates, it will be noted from Exhibit No. 56, are in every case higher than the third Royster scale, and applying the Royster scale from Atlanta to South Carolina points will mean substantial reductions on this traffic.

From Charlotte, North Carolina, to South Carolina points, the present rates reflect rates not lower than the Royster scale, and in most instances rates substantially higher than the Royster scale. For example, from Charlotte, to Bamberg, 175 miles, the present rates are $3.50, and the third Royster scale $3.27. The first Royster scale, revised in accordance with the general increases and reductions for 175 miles, would be $3.50, or the same as the present rates from Charlotte to Bamberg. The rates from Charlotte, as will be noted from my Exhibit No. 56, are in most instances higher than the third Royster scale, which is proposed in this proceeding, but in no instance is it lower than the third Royster scale.

From Wilmington, North Carolina, to South Carolina points, the present rates are on the third Royster scale basis, in accordance with amended Fourth Section Order 8945 of the Interstate Commerce Commission, dated November 10, 1924.

The origins which I have used in connection with this exhibit are the principal points shipping into South Carolina, and it will be observed that prior to March 15, 1924, the South Carolina rates were the same or higher than the Royster scale, the Savannah rates the same or higher than the Royster scale, the Atlanta rates generally higher than the Royster scale, the Charlotte rates generally the same or higher than the Royster scale, and the Wilmington rates on the Royster scale. Prior to amended Fourth Section Order 8945, the rates from Wilmington to many South Carolina points were the same, distance considered, as the intrastate rates within South Carolina. Prior to the reductions made [fol. 312] intrastate in South Carolina in March, 1924, there was quite a substantial movement of fertilizer from Savannah, Augusta, Atlanta, Charlotte, Wilmington and some

points like Wadesboro, North Carolina, into South Carolina. (Tes. 159-162.)

There is a correction I wish to make on the second page of my Exhibit No. 56; under the heading of Atlanta on Page 2, it should be Augusta, and where Augusta is shown, it should be Atlanta; the two names have been tranposed.

My Exhibit No. 57 is a statement of the present and proposed rates from Charleston, Savannah, Augusta, Atlanta, Charlotte and Wilmington, to North Carolina points; that situation was covered by a previous witness, and I will not take up any time to comment on it, it is just merely a statement of the present and proposed rates.

From such points of origin as Anderson, Blacksburg, Chester, Columbia, Greenville, Rockhill and Spartanburg, S. C., to destinations in the state of South Carolina, the present rates generally speaking are either the same as or higher than the Royster scale. Prior to the decision of the Commission in the first Royster case, that was decided in February, 1916, the carriers maintained a set of rates on fertilizer and fertilizer material- interstate between North and South Carolina points on a basis higher than that approved by the Commission in the Royster case. Following the Commission's decision in the first Royster case, we were immediately petitioned to revise our rates between North and South Carolina points when higher than the scale prescribed by the Commission in the first Royster case, but not once did we have the opportunity of revising any other rates when lower than the first Royster scale. The carriers were confronted with the same situation following the decision of the Commission in the Third Royster Case in 1918. In other words, whenever the Commission's decision in the Royster Cases resulted in reduced rates, we were immediately threatened with additional formal complaint unless your rates were promptly revised to basis no higher than that prescribed by the Commission in the Royster Cases. So, since 1916, we have been continually giving up revenue in the Southern Territory based on the rates which the Commission prescribed in the Royster Cases without at the same time gaining any increases in the rates when they [fol. 313] were lower than those prescribed by the Commission in the Royster Cases.

My Exhibit No. 58 is a statement of the present and proposed rates from South Carolina fertilizer shipping points to North Carolina points; Anderson, S. C., Blacksburg, S. C., Chester, S. C., Greenville, S. C., Rockhill, S. C., and Spartanburg, S. C., to North Carolina points. It will be observed that the present rates are substantially on the Third Royster Scale. (Tes. 163-165.)

Speaking about the cases where the Royster Scale would reduce the rate and how I account for that: Prior to the time that the Commission decided the First Royster Case in 1916, we maintained a level of rates between North Carolina and South Carolina that were higher than the rates which the Commission prescribed in the First Royster Case. Following the First Royster Case, we revised our rates in the Carolinas to the basis of the First Royster Scale. As you know, the carriers were never satisfied with the level which the Commission prescribed in the Third Royster Case, and at some of these points from South Carolina to North Carolina, and North Carolina to South Carolina, we have never put those rates all of them on the Third Royster basis. So, generally speaking, when the rates between the Carolinas, North and South, show higher than the Third Royster Scale, it does in fact reflect the first Royster Scale, that is, the rates have not been, some of them have not been revised.

There may be a few where the present rate is lower than the Royster Scale; there should not be any.

Generally speaking, from those South Carolina points to the North Carolina points, the scale generally governs; there may be a case here and there where we departed from the scale for competitive reasons, as you suggest. I am unable at this time to give you an explanation of the rate from Spartanburg to Forest City, of 158, and it should be 214 under the scale, but probably some competitive feature, I don't recall what that is, what caused that rate to be less than the Royster Scale. It may be a typographical error.

My Exhibit No. 59 is a statement of the present and proposed rates from Columbia, S. C., to North Carolina points having a population of over 1,500, and there it will be observed that the present rates—You will observe that the [fol. 314] present rates from Columbia to North Carolina points are either on the Royster Scale, or are generally

speaking higher than the Royster Scale. You will notice that Albemarle, N. C., is $3.27, while the Royster Scale would make it $3.49. I would be glad to look into that situation; there is a competitive situation there at Albemarle, and I wouldn't like to testify now without verifying it. But generally speaking, the rates from Columbia to North Carolina points are on the Royster Scale and higher than the Royster Scale. (Tes. 165-167.)

My Exhibit No. 60 shows the rates from Virginia cities, Norfolk, Richmond, Lynchburg and Petersburg to North Carolina destinations. It will suffice if I refer to Page 2, showing the results of the recapitulation of the information on that exhibit. From Norfolk, Va., you will note that the Norfolk rates are in fact on the Royster Scale, that is the Commission's decision in 50 I. C. C. 34. The rates from Richmond, Va., to the North Carolina points are slightly higher than the Royster Scale. The rates from Lynchburg, Va., to North Carolina points are also slightly higher than the Royster Scale. This is likewise true from Petersburg. There are fertilizer factories at all those points.

As to how it happens that these points in Virginia, which are all manufacturing points, have been content to have rates higher than Norfolk into North Carolina: You take Richmond, for instance, we maintain from Richmond to that North Carolina Territory, especially south of Greensboro, and have maintained for years, on classes and commodities, a parity of rates between Norfolk and Richmond; in connection with the fertilizer adjustment they were willing to accept that basis, in fact they did file a formal complaint with the Commission, and the rates shown on here are those which they agreed to operate.

"Q. Well, this doesn't show that they have had the same rates at Norfolk in all cases.

"A. You take Albermarle, N. C., Norfolk is $4.39 at present, Richmond is $4.39; Andrews, Norfolk $5.97, Richmond $5.97; Asheboro, Norfolk $4.28, and Richmond $4.28. I think you will find except for the short haul points——

"Q. Take Ayden, Richmond $3.15, Norfolk $2.82.

"A. That is one of the short haul points.

"Q. Take Beaufort.

[fol. 315] "A. That is a water competitive point.

"Q. Belhaven, short haul, I suppose?

"A. Short haul." (Tes. 167-169.)

It is a fact that when Richmond filed this complaint before the Commission within the past two years, that they stated they were satisfied with the establishment of the Royster scale from Richmond to the North Carolina destinations at that time. They accepted the Royster Scale to the short haul points, and the Norfolk rates, which were higher than the Royster Scale, to the longer destination points. We intend to break up that adjustment now; we intend to apply literally from the Virginia cities the Royster Scale rates, which we propose.

In connection with the rates from Charleston to Georgia destinations, I wish to file at this time my Exhibit No. 61, which shows the present rates and mileages on fertilizer from Charleston to Georgia points, as compared with what the rates would be under the carriers' proposed basis, namely, the Third Royster Scale, and also the same comparison from Savannah to Georgia destinations under the present and proposed basis. At the outset, I made mention of the fact that the Charleston to Georgia destination rates have had an adverse effect upon the intrastate rates in Georgia, and it will probably be well to explain in detail how the adjustment from Charleston to Georgia points was first brought about. There is no doubt that the witness dealing with the Georgia situation will unquestionably refer to the rates from Charleston to Georgia points having their effect upon the intrastate adjustment within the state of Georgia.

The old South Carolina & Georgia Railroad (now a part of the Southern Railway) extended from Charleston, S. C., to Augusta, Ga., and in connection with the Georgia Railroad and the Georgia Southern & Florida Railroad made a through line from Charleston, S. C., to such important Georgia points as Atlanta, Ga., Athens, Ga., Macon, Ga., Valdosta, Ga., and intermediate points. The old South Carolina & Georgia Railroad, with its route from Charleston to Georgia points through Augusta, did not serve Savannah nor any other Georgia ports; likewise, the Georgia Railroad with its lines from Augusta to Atlanta did not

[fol. 316] serve any Georgia port, and its interest was naturally in the movement of fertilizer from Charleston to afford it its maximum haul from Augusta. In order to meet the Savannah competition, the old South Carolina & Georgia Railroad, in connection with the Georgia Railroad, made rates on fertilizer and fertilizer material from Charleston, S. C., to points on the Georgia Railroad no higher than the rates which were applied from Savannah, Ga., to common points, extending this basis to the intermediate destinations. Other connections of the Charleston route, which did not reach Savannah or Brunswick, joined in rates from Charleston to such points as Columbus, Ga., Fort Valley, Ga., Hawkinsville and Valdosta no higher than the rates from Savannah, although in many instances were considerably greater. Many of these lines were also enabled to secure a longer haul, and does secure much more revenue on the Charleston traffic than on traffic moving from Savannah or Brunswick, and it was obviously immaterial to those lines from which port the fertilizer moved. This adjustment made effective by the old South Carolina and Georgia Railroad soon brought about a complaint before the Interstate Commerce Commission from the Savannah interests. The Interstate Commerce Commission held in effect that, considering the revenue, the wisdom of the Charleston line might be questioned in meeting the rates from Georgia ports, but there was no legal reason developed why lines and routes from Charleston should not meet this competition from Georgia ports if they saw fit to do so. (Savannah Bureau of Freight and Transportation vs. Charleston & Savannah Railway, 7 I. C. C. 458.) (Tes. 169-171.)

With the decision of the Commission in the Savannah case, the Savannah Fertilizer shippers then brought complaint before the Georgia Commission, taking the position that rates from Charleston were applied for long distances to points in Georgia the same as from Savannah to the same points for shorter distances, and therefore by comparison the rates from Savannah were too high. It was insisted that Savannah and Georgia points were entitled to their natural advantage according to distance, and should be accorded lower rates than those applicable from Charleston because of the less distance from Savan-

[fol. 317] nah to the Georgia points. The fact that the same rates were applied from Charleston into Georgia as were applied from Savannah for shorter distances resulted in the Georgia Commission substantially reducing the Georgia intrastate rates. The basis observed by the old South Carolina & Georgia Railroad has been continued to a great extent, except that to certain portions of Georgia, the rates from Charleston are made differentials higher than from Savannah, in the same manner that the rates from Savannah to certain South Carolina destinations are made differentials higher than the rates from Charleston. It will be noted from my Exhibit No. 61 that it is proposed to apply from Charleston to Georgia points the Third Royster Scale for the actual distance, the same as it is proposed to apply from Savannah and all other manufacturing points. Of course, the elimination of the low and competitive basis heretofore observed from Charleston to the Georgia points, and the substitution of a mileage scale would of necessity result in some increases in the rates from Charleston to Georgia points, unless some unreasonably low basis is applied from Savannah. (Tes. 171-172.)

In applying the equalization basis from Charleston and Savannah to Georgia points, there of course was no observance of the long and short haul clause of the Fourth Section of the Act.

It is very obvious from what I have said that the proposed revision will remove the cause of complaint of the Savannah interests respecting rates from Savannah, Ga., and South Carolina points, as compared with rates from Charleston to the same destinations.

I state that we propose to apply the mileage scale out of the ports on domestic traffic. Mr. Menzies had reference only to the import traffic. On the domestic traffic, we propose to apply from each port the Royster Scale, based on distance; on the import, as Mr. Menzies explained, there will be some port equalization on that imported material.

"Commissioner Eastman: Won't that lead to some controversy as to what is import traffic on fertilizer, the same question that arose in North Carolina at Wilmington?

"Mr. McGehee: It may revive some dispute, Mr. Commissioner, I think about all the questions have been raised, [fol. 318] but they are liable to come up again. I think, though, Mr. Commissioner, that that proposition now is before the Federal Court, and we will probably have a decision from them on that question prior to the decision in this case; that is my information.

"Mr. Gwathmey: The proposition is before the Federal Court on an order made by the North Carolina Corporation Commission, in which the Corporation Commission laid down an entirely different rule from that announced by the Interstate Commerce Commission in the Goldsboro Case.

"Commissioner Eastman: And the carriers agree with neither?

"Mr. Gwathmey: Neither one." (Tes. 172-174.)

In connection with practically every state fertilizer case that I have participated in, there has been advanced as a reason for reducing the state rates, the low scale that the Southern Railway maintains on its Richmond division in the state of Virginia. In my Exhibit No. 62, I have shown the six scales operated intrastate by the Southern Railway into Virginia, and have shown the scale of the Atlantic Coast Line Railway, and the scale of the Norfolk Southern. In exhibits which will follow, I will show the rates of the Norfolk & Western Railway and the rates of the Chesapeake & Ohio Railway. But first, if you please, I would like to compare the last four columns, the rates of the Coast Line, the Seaboard and the Norfolk Southern with the Royster Scale. Those are all fertilizer scales. I will explain how we got the six scales before I leave the exhibit. First, I would like to call attention to the comparison between the Coast Line, the Seaboard and the Norfolk Southern scales. You will notice that those scales are generally higher or the same as the Royster Scale, generally higher.

Now, we come to the Southern Railway Scales. You will find, especially for the short hauls, that they are materially less than the Royster Scale, and that they are materially less than the rates operated by any other carrier in the State of Virginia. I may state first that under Column 1 is the Richmond Division Scale, that applies to and

from points on the Richmond Division of the Southern Railway, in connection with the 25 per cent territory out-
[fol. 319] lined in Ex Parte 74, that is south of the line of the Norfolk & Western Railway from Norfolk through Lynchburg to Bristol. Scale No. 2 applies between the Richmond division and points in the 33 and 1/3 per cent territory, that is interterritorial application. Scale No. 3 is the 40 per cent territory. Under Scale No. 4 are the Norfolk Division rates, applicable in the 25 per cent territory on the Norfolk Division. Under Scale 5 is the 33 and 1/3 per cent territory on the Norfolk Division. And No. 6 is the 40 per cent territory.

Now, as to the short haul rates on the Southern Railway in Virginia. It is probably known that the Southern Railway was chartered under the laws of the State of Virginia, and under their charter there is a provision to the effect that the maximum rate that the Southern Railway can charge on fertilizer in the State of Virginia is 4 cents per gross ton mile with a minimum charge for 10 miles. Now, if we take 4 cents a gross ton mile under the charter prior to any of the advances, it would be 35 cents a net ton or 40 cents a gross ton; under General Order No. 28, that 35 cents a net ton goes to 40 cents; under Ex Parte 74, it goes to 50 cents, and under the 10 per cent reduction it becomes 45 cents. You will notice in the scales there, it is 45 cents for 10 miles and under, in accordance with the charter provision. However, I wish to say that at the present time the Virginia State Commission has authority to regulate these rates, and we do not anticipate any trouble in getting those short haul rates where they belong at this time. (Tes. 174-176.)

That is the old Richmond & Danville Railroad; we took over their charter, you understand. There is another thing about that Richmond Division scale that I want to explain; you will notice for the longer distances that practically all of our rates are substantially the same as the Royster Scale, with the exception of that Richmond division around about 152 miles. When those rates were originally established, the Chesapeake & Ohio Railway had a direct line from Richmond to Lynchburg; it made the rate; the old Richmond & Danville Railroad in an attempt to meet the competition of the Chesapeake & Ohio Railway

from Richmond to Lynchburg, undertook to publish by its [fol. 320] route through Danville, some 60 miles longer, the same rate as maintained by the Chesapeake & Ohio Railway for their direct line from Richmond to Lynchburg. The Virginia Commission had a very absolute long and short haul provision at that time, and that resulted in cutting back the stations on the old Richmond & Danville Railroad through Danville, including Danville; that is the reason why the rates between 125 and 150 and along in there are less than the rates on the other divisions.

As to whether we propose to apply the Royster Scale in Official Territory in Virginia, as well as in Southern Territory: That is the line of the Southern Railway north of Lynchburg that I was speaking of as the Southern Railway 40 per cent territory, and I don't see how we can consistently apply the Royster Scale on the Southern Railway in Virginia without at the same time applying it north of Lynchburg; and I am confident that the management will apply the Royster Scale throughout the Southern Railway's territory in Virginia.

It would appear from Exhibit No. 62 that we are proposing to make substantial increases on the Virginia intrastate traffic, and in order to show exactly what it means as to the Virginia intrastate traffic in connection with the Southern Railway, I have secured the origin and destination points for the month of March, 1924, in connection with which there has been an actual movement; I have shown those points on my Exhibit No. 63, indicating the present rates and the proposed rates. Alexandria to Bealeton, that is 40 per cent territory, the present rate is $1.89, and under the Royster Scale it will become $1.80. (Tes. 176-178.)

During that month I took between points on our line in Virginia every situation where there was a movement. This reflects exactly what the application of the Royster Scale will amount to, as far as the Southern Railway's traffic is concerned. Obviously, from my Exhibit No. 62, the application of the Royster Scale on the Atlantic Coast Line and the Seaboard Air Line, etc., would mean reductions for those lines.

At this time, I would like to file my Exhibit No. 64, which is a chronological and historical statement of the rates in South Carolina on fertilizer and fertilizer materials

[fol. 321] from 1890 up to the present time. The South Carolina Commission was organized in the latter part of 1878, and when it prescribed its first line of intrastate rates for application in South Carolina, it followed very closely the rates then prevailing in the adjoining state of Georgia. In the fifth Annual Report of the South Carolina Railroad Commission to the Governor of the State of South Carolina, *and* is the following:

"We were impressed with the importance of adopting some system which the public and not the railroads alone could grasp, and to this end the reports of the different Railroad Commissions were studied. The thoroughness of the system adopted by the Georgia Commission, together with the advisability of the two states so closely allied in business having a uniform method, prompted us to conform to this system as nearly as the laws under which we have to work would permit."

It is therefore obvious that at least originally the intrastate rates on fertilizer and other commodities in South Carolina were predicated on the rates prescribed by the Georgia Commission. Under Column "A" of my exhibit is shown the rates in effect intrastate in South Carolina in 1890; Column "B," 1895; Column "C," 1897; Columns "D" and "E," the reduced rates of 1905. Now, dealing with the reduced rates prescribed by the South Carolina Commission in 1909, as shown under Columns "F" and "G." (Tes. 178-180.)

In 1909, representatives of the South Carolina Legislature appeared before the South Carolina Railroad Commission, and requested an investigation of the rates on fertilizer intrastate in South Carolina, with a view of determining whether or not these rates were higher or discriminatory as compared with the rates which had just been adopted for intrastate application in Alabama by the Legislature of that state, and which rates were the same as those applicable in Georgia. I have indicated that the Georgia rates were reduced prior to 1909, due solely to the fact that, mileage considered, lower interstate rates were maintained from Charleston to Georgia points.

[fol. 322] The representatives of the Legislature insisted that the South Carolina Commission was not properly tak-

ing care of the people of South Carolina, in view of the fact that the Georgia Commission had reduced the fertilizer rates in their state, and also that the Alabama Legislature had reduced the fertilizer rates in Alabama.

The result of the proceeding before the South Carolina Commission was that there were finally established the reduced rates, as shown in Column "F" of my Exhibit No. 64. Immediately some of the South Carolina carriers took the matter to the courts, resulting in the suspension or cancellation of Order No. 129 of the South Carolina Commission, and the rates shown in Column "F" of my Exhibit, and a rehearing was had before the South Carolina Commission. The effect of this rehearing was that the South Carolina Commission finally established by their Order No. 135 the rates shown in Column "G," the effective date of which rates was December 6th, 1909. It is only fair to state that, in connection with the 1909 controversy, there were no representatives of the fertilizer interests or the public who took part in the case; the railroads were represented, together with two members of the Committee of the Legislature and the State Commissioners.

The rates under Column "H" represent the 1909 rates increased 25 per cent under General Order No. 28 of the Director-General; while the rates under Column "I" represent the increases under Ex Parte 74 of 25 per cent, August 26th, 1920; and Column "J" represents the 10 per cent reductions under the Interstate Commerce Commission's proceedings under Docket 13293.

As to the rates shown under Column "K" of 1923; in the latter part of 1922, the carriers operating in South Carolina were requested to meet the South Carolina Commission in an informal conference with the view of determining why the rates in South Carolina on fertilizer should not be put on a basis no higher than that applying from Charleston to the North Carolina points, and generally between points in the Carolina Territory, or the rates prescribed by the Interstate Commerce Commission in the Third Royster Case. The carriers explained to the South Carolina Commission at this conference that they had proposed to the Georgia Commission a line of rates for intra-
[fol. 323] state application in Georgia that were substan-

tially the same as the Royster Scale, but with certain changes in some of the mileage blocks to bring about what the roads considered a more harmonious adjustment. The carriers objected to the adoption of the Royster Scale, and submitted in lieu thereof the adoption of the proposed Georgia Scale, which scale had in effect been approved by the Interstate Commerce Commission in the Meridian Case, 66 I. C. C. 179. There were several informal conferences between the carriers and the South Carolina Commission, as a result of which the carriers finally consented to the adoption of the Royster Scale for application intrastate in South Carolina. The South Carolina Commission thereupon issued their Circular No. 271, of February 2nd, 1923, ordering in the Third Royster Scale for application intrastate in South Carolina. This scale was promptly put into tariff form by the carriers, and copies of our tariffs filed with the South Carolina Railroad Commission to become effective February 15th, 1923. Before the tariffs became effective, the South Carolina Railroad Commission withdrew its Order No. 271, restoring the rates previously in effect, and almost simultaneously set down for formal hearing the matter of intrastate rates on fertilizer between points in South Carolina. There were at least three formal hearings before the South Carolina Railroad Commission in 1923, involving the fertilizer rates. The carriers by appropriate testimony and exhibits, supported the application of the Royster Scale on South Carolina intrastate traffic. Notwithstanding, the South Carolina Commission on February 11th, 1924, issued its order No. 274 and Circular No. 275, reducing the intrastate rates on fertilizer in South Carolina horizontally 12 per cent to become effective February 15th, 1924. Under the law of South Carolina, the Commission must give the carriers at least thirty days notice before making effective any reduced rates; hence the carriers did not publish the reduced rates to become effective until 30 days after they received the South Carolina Commission's Order No. 274, of March 15th, 1924. These reduced rates of 1924 are shown in Column "L."

Following the decision of the Interstate Commerce Commission in the Blackshear Case, wherein certain expressions were made by the Commission with respect to the [fol. 324] Royster Scale, and also following the radical re-

ductions made by the Alabama Commission on Alabama intrastate traffic, the fertilizer interests filed a petition with the South Carolina Commission, resulting in the South Carolina Commission again citing the carriers to appear before it and show cause why further reductions should not be made in the already low rates then applicable intrastate in South Carolina, and which rates were then being contested before this Commission in a Thirteenth Section proceeding under Docket 16335. (Tes. 180-184.)

There was very little additional evidence offered at this last hearing before the South Carolina Commission; notwithstanding the South Carolina Commission undertook by its Order No. 300 of January 30th, 1925, to further reduce the South Carolina intrastate rates an additional 10 per cent. Before the reduced rates could be made effective, the carriers applied to the Federal Courts for an interlocutory injunction to prevent the enforcement of the South Carolina Railroad Commission's Order No. 300, and such an order was issued by the United States District Court for the Eastern District of South Carolina, dated April 8th, 1925, granting an injunction against the South Carolina Commission's Order No. 300, so that the rates shown in Column "M" have not in fact been made effective, but have been made enjoined by the Federal Courts. Under Column "N" is the Third Royster Scale, which is placed in the exhibit for comparative purposes.

In connection with that exhibit No. 64, if you please, a comparison of Column "H," which are the rates that became effective under the Director-General's 25 per cent increase order in 1918, and in Column "L" are the rates that are at present applied in South Carolina, which is the result of the South Carolina Commission's order in 1923, you will note that the Column "L" rates are substantially the same as the June, 1918, rates, or in many instances 1 to 3 cents a ton less; notwithstanding that fact, under Column "M" are the rates which were recently ordered by the South Carolina Commission, and which have been temporarily enjoined. (Tes. 184-185.)

Our present intrastate rates in South Carolina are not substantially the same as or lower than they were prior to any increases made under G. O. 28; they are substan- [fol. 325] tially the same as the G. O. 28 rates, mostly one

or two or three cents a ton less than the General Order No. 28 rates. My Column "H" reflects the 25% increase, and "G" shows the rates in effect prior to the 25% increase. As a matter of fact the Royster Scale at present is but a few cents higher than the So. Carolina rates in 1918 after G. O. 28. It is also true, certainly up to 110 miles, that our rates in So. Carolina today are not any higher than they were in 1890.

Exhibit 65, consisting of 3 pages, is a copy of the So. Carolina Commission's order 274, of Feb. 11, 1924. In connection with this order, I direct your attention to the first paragraph on page 2, wherein the So. Carolina commission indicates that in its judgment the loss of revenue to the carriers from the reductions made in February, 1924, would be approximately $100,000.00; the carriers have alleged that the reductions will be even greater than that. (Tes. 185-186.)

Exhibit 66 is a copy of the So. Carolina Commission's order 300 of Jan. 30, 1925, that has been temporarily enjoined by the courts. That exhibit consists of 3 pages, and you will notice that the last page, on which Circular 289 appears, is not marked.

Exhibit 67 is a copy of the order of the U. S. District Court for the Eastern District of So. Carolina, granting an interlocutory injunction in connection with So. Carolina Commission's order 300.

The So. Carolina Commission withdrew their order insofar as it affected the short lines, and they withdrew it against the joint application between the Blue Ridge and the Southern Railway; in other words, the rates on the Blue Ridge in effect under the previous order remained the same, and as we construed the statement of the Attorney General of So. Carolina we were authorized to apply combination basis between Southern Ry. stations and Blue Ridge Ry. stations, although we have not as yet revised the rates to that basis.

Exhibit 68 gives a list of articles contained in the So. Carolina Exception Sheets to the Southern Classification applicable on intrastate traffic. This list is substantially the same as the interstate list, that is insofar as the commodities actually moving in intrastate commerce in So. [fol. 326] Carolina are concerned. The carriers' Exhibit

8 contains many articles that are not shown in this list, but I have not been able to find anything here which is not contained in Exhibit 8. (Tes. 186-187.)

Exhibit 69 is a map of the state of So. Carolina. I have inserted on the map in red circles the interstate fertilizer shipping points shipping fertilizer and fertilizer material into the So. Carolina points. The object of that is to give a good view of the discrimination feature which has been covered in some of the previous exhibits. I have undertaken to show on this map the principal points shipping into So. Carolina that are adjacent to the state of So. Carolina. On the right of the map appears Wilmington, and of course Wilmington is shown in the margin, and is not in the exact geographical location, because there wasn't room on the map. And the map also shows Wadesboro, N. C., Charlotte, N. C., Toccoa, Ga., Atlanta, Ga., Augusta, Ga., and also Savannah, Ga., which are the principal points shipping fertilizer and fertilizer material into So. Carolina. I made an investigation for the first six months of 1923 as to the total number of cars of fertilizer and fertilizer material moving from interstate points and delivered at destinations located on the Southern Ry. in the state of So. Carolina during that period. During that period there were shipped to destinations on the Southern Ry. and delivered at Southern Ry. destinations from interstate origins, 1,530 cars of fertilizer and fertilizer material. During that period there were 3,816 cars moving intrastate in South Carolina and delivered by the Southern Ry. During the month of March, 1924, 543 cars originated at the interstate points and were delivered by the Southern Ry. at No. Carolina destinations. The intrastate movement delivered at destinations located in No. Carolina on the Southern Ry. during March, 1924, was 917 cars.

Taking up now Exhibit No. 70: In connection with the information I have furnished the So. Carolina Commission as to the actual movement for the first 6 months of 1923, I have tabulated on Exhibit 70 these origin points and destination points; I have first shown the interstate points shipping into So. Carolina, and directly beneath it, I have shown the intrastate points shipping to the same destinations. The purpose of that exhibit is obvious—to show the [fol. 327] discrimination brought about by a reduction in

the So. Carolina Commission's fertilizer rates. I know of no transportation reason or any other reason why rates between points in So. Carolina for a given distance should be on a lower basis than the rates from points just over the line in No. Carolina, into So. Carolina, or from Savannah or Augusta or Toccoa, Ga., into So. Carolina for corresponding distances. In connection with my Exhibit 17 [70] the first point appearing on the exhibit, Savannah to Abbeville, 208 miles, the rate prior to the order of the So. Carolina Commission in February, 1924, which became effective March 15, 1924, was $1.05; from Charleston to Abbeville, 235 miles, or approximately 27 miles greater in distance, the rate was $3.03; nevertheless, the So. Carolina Commission reduced that rate on March 15, 1924, to $3.37, and on March 28, 1925, they were attempting to further reduce it to $3.11. At Bamberg, S. C., from Augusta, Ga., 61 miles, prior to March 15, 1924, the Augusta rate was $2.14; but Columbia to Bamberg, 68 miles, or 7 miles difference, the rate was the same, they were on a parity, $2.14; under the South Carolina Commission's order of March 15, 1924, they reduced the rate from Columbia, S. C., to Bamberg to $1.88, and by their order of March 8, 1925, they attempted to further reduce it to $1.79. (Tes. 189-191.)

The points of origin and destination shown on exhibit 70 are points from and to which there are actual movements of fertilizers. I did not find out how the volume of interstate traffic from those points into So. Carolina compared with that moving intrastate on all traffic; I gave the figures on fertilizer.

In my Exhibit 71, I have shown the rates from Wadesboro, N. C., to representative points in So. Carolina, on fertilizer and fertilizer material, compared with the So. Carolina intrastate rates and with the Royster scale. The purpose of that exhibit is to show that under the So. Carolina Commission's order of March 15, 1924, the level of the intrastate rates in So. Carolina was brought down far below the level from interstate origin shipping points.

On Exhibit 72 is shown the interstate rates from Wilmington to So. Carolina representative points, compared with the rates intrastate from Charleston and Columbia to the same destinations. Wilmington to Clio, S. C., for ex-
[fol. 328] ample, 129 miles, prior to the So. Carolina Com-

mission's reduction of March 15, 1924, the rate was $2.76; 126 miles from Columbia, it was $3.04; notwithstanding that the distances are comparable, the So. Carolina reduced rate makes Columbia $2.68, and the March 8, 1925, rate $2.36, against the $2.70 rate from Wilmington. To Dillon, S. C., from Wilmington, 103 miles, the rate is $2.59; from Columbia, S. C., to Dillon, 112 miles, prior to the South Carolina Commission's reduction, the rate was $2.82, and became $2.48 under the March 15th, 1924, reduction, and $2.48 under the March 15th, 1924, reduction, and $2.17 under their order of March 8th, 1925, which has been temporarily enjoined. (Tes. 191-192.)

Exhibit 73 compares the rates from Charleston, S. C., and Wilmington, N. C., to points on the A. C. L. between Wilmington and Charlotte. Of course, from Charlotte to No. Carolina points, the rates are on the Royster scale, following the Commission's decision in the Charleston Steering Committee Case. Take Charleston to So. Carolina points; prior to the So. Carolina Commission's reduction of March 15, 1924, for 142 miles, you have a rate of $3.15; they reduced that rate on March 15, 1924, to $2.88. I direct your particular attention to the spread between Grist, N. C., and Causey, S. C., 15 miles, 37 cents, as soon as you cross the State line. The Wilmington rates to No. Carolina points and So. Carolina points of course are on the Royster scale.

Exhibit 74 is a similar comparison, using Wadesboro, N. C., and Charleston, S. C., to stations on the Coast Line between Charleston and Wadesboro. What I said as to Exhibit 73 applied with equal force to 74.

Exhibit 75 makes comparison between Columbia, S. C., on the one hand and Wadesboro, N. C., on the other, to stations on the Seaboard between Columbia and Wadesboro. I call your particular attention to the spread in the rates as soon as you pass from No. Carolina to So. Carolina across the State line; there is Osborne, N. C., 100 miles, the present rate from Columbia is $2.82; and from Columbia to Fulton, S. C., intrastate the rate is $2.28, or a spread of 54 cents for a difference in distance of 4 miles. While from Wadesboro on the Royster scale, the spread for a similar break is about 12 cents. (Tes. 192-193.)

[fol. 329] Exhibit 76 makes comparison between Columbia, S. C., on the one hand, and Charlotte, N. C., on the other, to

stations on the Southern Ry. between Columbia and Charlotte. Cornwell, S. C., 55 miles from Columbia, has a rate at present of $1.79; Charlotte to Cornwell, 52 miles, pays $2.37; prior to the So. Carolina's Commission's reduction of February, 1924, the Columbia rate was $2.03; under the proposal here, which contemplates the application of the Royster scale to Cornwell and substantially equidistant points the rates would be the same, $1.92.

Exhibit 77 contrasts the rates from Greenville, S. C., to points on the Southern Ry. between Greenville and Charlotte, with the rates from Charlotte to the same destinations. That exhibit is similar to the exhibits that I have just analyzed.

The Royster scale was graded by the Commission from 35 miles to 500 miles, and it was extended to 600 miles in the Charleston case. After leaving 280 miles, the gradation is in 20 mile breaks. The gradation is the same as before, except that the breaks are larger. Before reaching 280 miles, there are 10 mile breaks—under the general increases and reductions you have in some instances there under 280 miles breaks that consist of at least 20 miles there, the disposition of fractions when you increased the rates had something to do with it. That scale was designed for intrastate traffic in North Carolina originally; it is the scale that the Justice Commission appointed by the North Carolina legislature worked out. The carriers have extended the 600 miles scale which the Commission themselves prescribed as reasonable in the Charleston case and the Royster case, and used the same rate of progression for distances over 600 miles as the Commission used for distances between 500 and 600 miles, which was 25 miles; after leaving 500 miles in the Charleston case, it was 25 miles. (Tes. 193-195.)

Having in mind tankage, there would be some fertilizer materials that would move long distances under that scale. Cyanimid also. Phosphate rock doesn't take the fertilizer rates; they are on a lower basis than fertilizer. We are not proposing to put them under the same rates; the phosphate rates are not involved. Ground phosphate rock is [fol. 330] in the list, Exhibit 8; that would not move for longer distances. I expect to show that this scale when extended in the manner proposed is reasonable for long hauls.

Exhibit 78 contrasts the rates from Greenville, S. C., to points on the Southern Railway between Greenville and Atlanta, with the rates from Atlanta, Ga., to the same destinations. I would like to call attention to the rates to Madison, S. C., and Trigalo, Ga., the two points, one on each side of the State line, from Greenville, S. C.; as soon as you cross the State line 3 miles, you have got a spread in rate there of 36 cents on account of those intrastate rates in So. Carolina; under Atlanta, you have the same situation reflecting your Georgia intrastate rates. I have shown in Exhibit 70 the exact points shipping into So. Carolina, and you will find Atlanta to Blacksburg and to other points, Atlanta to Cowpens, among other points, Atlanta is placing fertilizer into the South Carolina points. I can't say that I have developed anything to indicate that the discrepancy in rates has hindred Atlanta from shipping; we are having continual complaints from such points as Augusta and Savannah; in fact, there is pending a complaint before the Commission about the Savannah to So. Carolina rates, that involves Section 13 against the joint rates, too.

Savannah being located just across the State line in Georgia, Savannah interests have made representations to me that these reductions in So. Carolina without corresponding reductions from Savannah have just about ruined their business in So. Carolina. They have filed a formal complaint with the Commission wherein they have made those allegations. (Tes. 195-198.)

Prior to the time that the So. Carolina Commission reduced their intrastate rates on fertilizer and fertilizer material, March 15, 1925, the route of the A. C. L. and Charleston & Western Carolina Ry. from Charleston, S. C., to such points as Greenville and Spartanburg, shown in Exhibit 79, was open; that as an interstate route and that interstate route attempted to compete with the intrastate route of the Southern Ry. through Columbia to those points. Now the intrastate distance from Charleston to Greenville, for example, is 215 miles by the Southern Ry., that is the [fol. 331] intrastate distance; the interstate distance by the Coast Line and the C. & W. C. is 216 miles, with a parity of rates before the So. Carolina Commission reduced their rates on March 15, 1924, at Greenwood. At Greenwood, on March 15, 1924, the interstate rate continued at $3.83, while the intrastate rate became $3.37; the carriers

were not willing to extend the low So. Carolina made rates for interstate application, and therefore retired from the business via the interstate route through Yemassee and Augusta. The effect of it was to either meet the So. Carolina intrastate situation or else close the interstate route, and we preferred to close the interstate route rather than apply that low level of rates to the interstate traffic. I assisted in connection with the 13th Section application that was filed by the carriers with the Commission respecting the So. Carolina rates, and the statements contained in that petition are true to the best of my knowledge and belief.

Exhibit 80 shows the present and proposed rates on fertilizer from Ohio and Mississippi River crossings to points in the Carolinas. The rates shown in the exhibit apply on fertilizer, and do not include tankage; I will comment on some of these specific points to which the tankage rates are in effect less than the fertilizer rates at the present time. Originally when the rates from Ohio River crossings to points in the Carolinas were made effective they were controlled substantially by the rates from the C. F. A. territory, particularly Chicago, Ill.; the rates from Chicago to Carolina points reflecting the Virginia Cities combination, the rates from Louisville and Cincinnati were made as much less than the combination from Chicago as the lines operating from Chicago to the Ohio River demanded as their proportions; so substantially the rates from the Ohio River crossings to the Carolinas were nothing more nor less than the balance of through rates from Chicago. A complete and concise history of these Carolina rates will be found in Rates to North Carolina, 29 I. C. C., 580, State Corporation Comm. of Virginia v. C. & O. Ry., 40 I. C. C., 24; and the Spartanburg Chamber of Commerce v. Southern Ry., 34 I. C. C., 484 and 59 I. C. C., 346. (Tes. 198-200.)

I am talking about fertilizer rates. That was true of [fol. 332] the class rates too—they represented the balance of the through rate from Chicago, I think it was testified in 13494. Now, as to the rates from Evansville and Cairo, the general basis ever since I can remember, Evansville and Cairo to the Carolina points, has been a differential over Louisville and Cincinnati; there has been a parity of the Louisville and Cincinnati rates to the Carolinas; from St. Louis and E. St. Louis, the rates have been differentials

over Evansville and Cairo. Under the proposed adjustment, we contemplate applying from Louisville, Ky., as a pivotal point, the Royster scale, and the scale which the carriers have submitted in this proceeding above 600 miles. The rates from Cincinnati are to be made the same as Louisville; the rates from Evansville and Cairo are so to speak to continue to be made on a differential basis of 79 cents higher than the rates from Louisville and Cincinnati; that 79 cents is arrived at in this manner, it represents the difference in the rate based on the scale to representative points in the Carolinas; the rates from St. Louis to points in the Carolinas, it is proposed to continue on the differential basis of $1.20 a ton over the Evansville and Cairo rates. From Memphis it is proposed to apply the mileage scale. The fertilizer or fertilizer materials that move from those distant points into the Carolinas are tankage particularly, and cyanimid. Tankage moves from St. Louis, and it moves from the Ohio River crossings, and it moves from points beyond. Cairo is nothing more nor less than a basing point on traffic coming from beyond; I don't know of any fertilizer material or fertilizer that moves from Cairo; there may be a plant there that I don't know of. In the case of the Virginia cities, have testified that we are going to break up groupings of long standing and apply the mileage basis. On domestic traffic from the ports we are going to do the same thing.

As I have stated, the relationship of Ohio River adjustment has been of long standing, and the carriers were not willing, inasmuch as they proposed to operate it on the Southeastern business, to break it up on the Carolina business. We are getting away from the relationship as to the Virginia cities on the Carolina traffic, that is true, and the only explanation I am at this time prepared to make [fol. 333] to you is that it represents the best judgment of the managements of these carriers, that is all. Evansville and Cairo should be grouped on this primarily to take care of the business coming from back of those points; I would say primarily because of the combination basis of rates. None of this traffic originates at Cairo proper. So far as Cairo is concerned I don't understand there will be any competition on fertilizer or fertilizer materials between Cairo and Evansville, but there would be as a basing point on traffic from beyond. On a good many commodities Mem-

phis has had a long standing relationship with the Ohio River cities on traffic in the Carolinas; practically everything. I don't recall whether that applied to fertilizers or not, but that was the equalization proposition with Memphis, and we propose to get away from that as far as fertilizer is concerned.

"Q. Well now, why are you less solicitous about Memphis here than you are about the others, you are going to destroy the combination so far as Memphis is concerned?

"A. Traffic from Central Freight Association Territory to the Carolinas don't move through Memphis, that is not the natural route."

The necessity for equalizing the through route does not exist as to Memphis, as far as Chicago and other points that are shipping this material are concerned; that is the only explanation I can give you for maintaining the grouping at the Ohio River. If we were going to apply joint rates from the Official territory into the South the necessity for grouping the Ohio River crossings would cease to a great extent. (Tes. 200-204.)

Cyanimid comes from Niagara Falls as a rule and moves to Carolina territory through our Cincinnati route, and is also moved through the Evansville route. This proposed scale on Exhibit 80 is the Royster scale extended as shown for distances beyond 600 miles with the same rate of progression as we made in the fertilizer between 500 and 600 miles. It is not the Royster scale from Cairo, it is a differential over Louisville and Cincinnati, as I testified; I might say it is substantialy the Royster scale because the differential is arrived at by taking the rates from Cairo and [fol. 334] Evansville on the Royster scale as compared with Louisville on the other hand, to representative points in the Carolinas, and it gives you that 79 cents difference which is applied uniformly to all points in the Carolinas. I do not recall how much further Cairo is than Evansville to the No. Carolina points. (Tes. 204-205.)

I filed an exhibit indicating that Baltimore, Md., is the largest manufacturer of fertilizer in this country. In my exhibit 81, I have compared the scale which is prepared by the carriers for application in Southern Territory with the

rates which apply from Baltimore, for example, to destinations on the Pennsylvania R. R. In connection with the rates in the Trunk Line Territory, those rates are generally on the Sixth Class basis. It seems before the General Order 28 advances, the carriers in the Eastern Trunk Line territory published a good many commodity rates on fertilizer, that is to bring them into one issue, on the basis of the Sixth class rate. Now when the class rates were increased under G. O. 28 and Ex Parte 74, the Eastern lines restored the relationship as between the class rates that was disrupted by Ex Parte 74, but they did not restore the relationship as between the fertilizer rates, which were originally on the class basis. So today you will find some commodity rates on fertilizer in the Trunk Line Territory, that are a cent down to half a cent below the Sixth Class rate, or some even half a cent higher than the Sixth Class rates. In these exhibits that I am about to introduce comparing the fertilizer rates in the Trunk Line Territory, I have taken the commodity rates or the class rates, whichever were in effect. Exhibit 81, as indicated, compares the rates on fertilizer from Baltimore to Pennsylvania R. R. stations, with the rates under the Royster scale, and the rates which the carriers are proposing in this proceeding. Of course, the distances under 35 miles are the proposed carriers' rates, and are not the rates under the Royster scale, because the Commission did not prescribe any rates for 35 miles and under. These rates from Baltimore are the Sixth class rates; in some instances they are a cent and half a cent less than Sixth class, in other instances they were originally on the basis of the Sixth class rates, but the general increases disrupted the relationship, because the class rates were revised so as to bring about the relation-
[fol. 335] ship that existed prior to Ex Parte 74 in the fertilizer rates, and they were revised to that extent. (Tes. 205-207.)

Baltimore does not ship into the South, because I have made a test of the actual movement to No. Carolina and So. Carolina; I did not make any test as to the Southeastern points. There was a time when Baltimore did ship extensively into the Carolinas, but with the location of the plant at Norfolk, it discontinued that shipping into the Carolinas, and from the information I have secured from

our auditor, there is generally speaking no movement of fertilizer from Baltimore into the Carolinas at present. I understand that many of the fertilizer companies which have factories throughout the South have factories at Baltimore. In accordance with the testimony in the North Carolina case before the North Carolina commission it is a fact that some of them had had factories there for about 20 years and up until recently had never filed any complaint with respect to their rates on fertilizer out of Baltimore to destinations on the Pennsylvania and B. & O. Railroads. There is a complaint pending now and I expect to refer to that later on. I have not made a thorough investigation as to fertilizer materials shipped from Baltimore into the Southeast, but I have of the Carolinas, and I find that there are practically no materials moving to the Carolinas; that is no appreciable movement to the Carolinas. I have gotten the actual movement for just one month, March.

"Q. That would be the month in which the materials would move, but there is a large movement of materials from Baltimore into the Carolinas?

"A. Not according to my information.

"Q. But according to my records, there is.

"A. That is all right, I am glad to have you testify to that."

The rates from Baltimore into the Carolinas are related to Norfolk; they were originally, as I recall it, one or two dollars a ton higher than Norfolk. (Tes. 207-209.)

As to whether they are higher or lower than the Royster Scale: We have not applied a scale from points in outlying territory to points in the Southeast or the Carolinas; naturally, if you try to compare the Royster Scale with the [fol. 336] Baltimore rates, you are going to show substantial reductions. The Baltimore rates are higher than the scale; we do not propose any scale for application from Baltimore. As an actual fact, either now or in the past, we have not been able to move fertilizer from Baltimore to points in the Southeast on the 6th class rates, but the 6th class rates are the rates actually moving the traffic in substantial volume in Trunk Line and C. F. A. territories, and are comparable with the rates that move the traffic and which we propose to publish and expect to move it freely

in the South. 6th class in Official Territory is quite a different thing from 6th class in the South; I am not comparing the two. I am taking the rates that I know move the traffic. As to whether there are a great many commodity rates from Baltimore on fertilizer: Originally the eastern lines undertook to put all their fertilizer rates in one tariff, publishing them generally speaking on 6th class basis, and along came G. O. 28 and Ex Parte 74 and disrupted the relationship as between the commodity rates and the class rates; they restored the relationship as to the class rates, and did not revise the commodity rates, so there are many commodity rates today on fertilizer from Baltimore that are either ½¢ or 1¢ higher than 6th class, or lower, one way or the other, but there may be some commodity on materials I don't know of lower than 6th class.

I have not an exhibit showing the comparative rate levels as — 1914, at the time the Royster Scale was prescribed, but I remember in the Royster Case, before G. O. 28 or before Ex Parte 74, we showed in that case that the rates in Trunk Line territory were higher than the Commission prescribed in the second or Third Royster case. It includes the 15 per cent advance, which was in 1915. I have no later exhibits showing the differences and spreads between the rates shown and others going back to 1914. (Tes. 209-212.) Exhibit No. 82 is a comparison of the rates from Baltimore, Md., to Baltimore and Ohio Stations on fertilizer, with the rates under the Royster Scale for similar distances.

Exhibit No. 83 is a comparison of the rates on fertilizer from Philadelphia to Baltimore and Ohio Stations with the rates on the Royster Scale for similar distances.

[fol. 337] Exhibit No. 84 is a comparison of the rates from York, Penn., to Western Maryland stations with the rates on the Royster Scale for similar distances.

There is a substantial movement of fertilizer on these rates that we are using here; I inquired of the eastern lines, and there was quite a movement.

By Commissioner Eastman:

"Q. This is practically a duplication of what Mr. Mensies filed yesterday, except you have the specific points and rates in it; and he had a scale.

"A. I don't recall him having shown a scale in the Trunk Line Territory, because I know of none." (Tes. 212-213.)

He showed a scale for the Central Freight Association Territory, as I recall it.

Exhibit No. 85 is a comparison of the rates on fertilizer from York, Penn., to Pennsylvania Railroad stations, with the rates under the Royster Scale for similar distances.

For distances under thirty miles—for that distance—we have taken the Royster Scale or the North Carolina intrastate rates, or the rates that we are proposing in this proceeding.

Exhibit No. 86 is a comparison of the rates on fertilizer from Hagerstown Md., to Baltimore & Ohio Roilroad stations, with the rates on the Royster Scale for similar distances.

Exhibit No. 87 is a comparison of the rates on fertilizer from Syracuse, N. Y., to New York Central Railroad stations with the rates on the Royster Scale for similar distances.

I have made some investigation as to the movement of fertilizer from Baltimore by the Western Maryland Railway to Eastern Trunk Line Territory, and have shown in my Exhibit No. 88 the points to which Baltimore has been shipping by the Western Maryland to Trunk Line points, and compared their rates with the rates on the Royster Scale for similar distances. I invite your attention to a summary shown on Page 2. On Page 2 of the exhibit is a tabulation of the actual movement for the month of April, 1924 from Baltimore to stations in the Trunk Line Terri- [fol. 338] tory via the Western Maryland Railway, as secured from Witness McCawley's Exhibit No. 36 in Docket 15912. The total weight to this terriotry for the month of April being 2,434,531 pounds; the average revenue per car mile 30.87 cents; the average rate 26.6 cents; the average haul 679 miles. Now, for 379 miles under the joint haul scale, Royster Scale, would be 24.8 cents, against the 26.6 cents from Baltimore to Trunk Line Territory; the car mile earnings under the joint Royster Scale for 379 miles based on the average loading here, would be 28.8 cents.

"Commissioner Eastman: I was mistaken about these Menzies exhibits; they show scales in the Official Territory only in C. F. A. on the Chesapeake & Ohio Railway and in the states intrastate." (Tes. 213-215.)

My Exhibit No. 89 is a comparison of the Norfolk & Western Railway scale Western Division with the Royster Scale.

My Exhibit No. 90 is a comparison of the Norfolk & Western Railway scales Eastern Division with the Royster Scale. Scale B shown on that Exhibit is the Norfolk & Western Railway's intrastate Virginia Scale.

My Exhibit No. 91 is a comparison of the Chesapeake & Ohio Railway scales with the rates under the Royster Scale. I have developed that from Norfolk and Lynchburg in connection with the Chesapeake & Ohio Railway and the rates shown in this exhibit, there were 2,321 tons moving in the early part of 1924.

I don't understand that those Chesapeake & Ohio rates are in issue. I would imagine that if we were going to change our rates in Virginia throughout all Virginia to the Royster Basis, it would be difficult for the Chesapeake & Ohio Railway not to do the same. We have that same situation on brick, where the Commission gave the Eastern lines a higher basis than they gave the Southern lines on account of the equalization of revenue rule. Now, that question is before the Virginia Commission, the Chesapeake & Ohio Railway is trying to get the Virginia Commission to approve the rates which you prescribed for them on interstate traffic, and naturaly we had to go with them and get them to approve the rates you prescribed for us on inter-[fol. 339] state traffic, so we are just in a mess on account of that I. & S. 1885.

Exhibit No. 92 is a comparison of the rates on fertilizer from Boston to Boston & Maine Railroad stations, with the Royster Scale.

"Commissioner Eastman: That probably accounts for the bad state of agriculture in New England.

"Mr. Gardner: They seem to be successful in maintaining a more reasonable level of rates than we are." (Tes. 215-216.)

By Mr. Burr:

"Q. What do they fertilize along the Boston & Maine?

"A. There are plenty of potatoes up there somewhere.

"Commissioner Eastman: That is further north yet."

Maine consumed in 1923 160,000 tons; in 1924, they consumed 182,000 tons of fertilizer; Florida consumed 365,000 tons; Maine consumed approximately 50 per cent.

There is a fertilizer factory at Boston, and my information is that they are shipping fertilizer to this territory. They raise tobacco up there in some of this territory, very high class wrappers.

Exhibit No. 93 is a comparison of rates on fertilizers from Middletown, Conn., to New Haven stations, with the Royster Scale.

Exhibit No. 94 is a comparison of the rates on fertilizer from New Haven to New Haven stations, with the rates on the Royster Scale.

Exhibit No. 95 is a comparison of the rates on fertilizer from Waterbury, Conn., to New Haven stations, with rates on the Royster Scale.

Passing to a somewhat different territory in my comparisons, that is the Central Freight Association territory, certain of the shippers in that territory have attacked the rates on fertilizer in a formal complaint before the Commission. That particular complaint was filed by the Ohio Farm Bureau Federation, who represent, if I recall the record in that case, some 35,000 farmers.

Exhibit No. 96 compares the rates which we are proposing in the Southern Territory, as compared with the rates [fol. 340] that the farmers in that territory are asking for; it shows first, the Royster Scale; it shows second, the present C. F. A. Scale; it shows third, 80 per cent of the Sixth Class rates, which is the basis that has been requested by the farming interests in Ohio in Docket 15912. (Tes. 216-218.)

It is only fair to say that after the farming interests in those states filed their complaint, the fertilizer interests in that territory wanted rates a little bit lower than the farming interests asked for, and they have a complaint pending before the Commission. The farming interests, as indicated, asked for 80 per cent of the Sixth Class on fertilizer, and the fertilizer manufacturers have now asked for 75 per cent of Sixth Class.

When you go beyond 130 miles, the rates that the farmers are asking in C. F. A. Territory are below the Royster

Scale. But I think it correct that in our territory, as stated by Mr. Menzies, the average movement here is for approximately, in Southern Territory, 100 miles somewhere.

My Exhibit No. 97 shows the rates from Baltimore, Md., to C. F. A. points, contrasted with what the rates would be under the Royster Scale. Now, the destination points shown in this exhibit are points to which there was an actual movement during the spring of 1924, and the destination points were taken from Witness McCawley's exhibit in Docket 15912. I make that explanation to show that there is a substantial movement in that territory.

Exhibit No. 98 contrasts the Royster Scale with the Ohio intrastate scale. Of course, the Ohio intrastate scale is under attack jointly in the proceeding 15912, as I understand it, and according to the record, the Ohio Commission with a representative of the Interstate Commerce Commission heard the case jointly; so those rates are really under attack. But look if you please, at the relationship of the Ohio present rates with the Royster Scale.

Exhibit No. 99 is merely a recapitulation of Witness Hunter's Exhibit No. 17 in Docket 15912, showing the actual movement of fertilizer from St. Bernard, Columbus, Cleveland, Ivorydale, Sandusky, Toledo, Middletown, Dayton and Girard, Ohio, to Ohio destinations; and for the year 1923 the average miles hauled was 113 miles and the average weighted rate is 16.3 cents for 113 miles. Under the Royster Scale, the rate would be 13½ cents. The aver- [fol. 341] age earnings per car mile was 56.8 cents, and under the Royster Scale, it would be 51.8 cents. The average earning per ton mile was 28.8 mills, and under the Royster Scale it would be 23.8 mills. There were 414 cars moving, it will be noted. (Tes. 218-220.)

My Exhibit No. 100 gives the actual movement from Lockland, Ohio, to Official Classification Territory, as shown in Witness Hunter's Exhibit No. 16 in Docket 15912. The combined inter and intrastate movement, you will note, and the average miles hauled was 145 miles; the average weighted rate was 17.9 cents; under the Royster Scale, it would have been 14.7 cents; for 145 miles, the average earnings per car mile was 51.2 cents, and under the Royster Scale for 145 miles it would have been 44.9 cents; the aver-

age earning per ton mile was 24.7 mills, and under the Royster Scale it would have been 20.2 mills. It might be well there to compare that rate of 17.9 cents for 145 miles, under the C. F. A. Scale, the C. F. A. Scale for 145 miles would have been 18 cents, the rate charged was 17.9 cents, pretty close. On interstate traffic, the average miles hauled was 133 miles, the average weighted rate was 16.8 cents, while on the Royster Scale it would have been 14.1 cents; the average earning per car mile was 52 cents, and under the Royster Scale it would have been 46.3 cents; the average earning per car mile was 25.3 mills, and under the Royster Scale it would have been 21.2 mills. Intrastate, 967 cars, average miles hauled 152 miles; average weighted rate 18.5 cents, under the Royster Scale 15.8 cents; average earning per car mile 50.6 cents, under the Royster Scale it would have been 45.3 cents. Average earnings per ton per mile 24.5 mills, and under the Royster Scale it would have been 20.7 mills.

My Exhibit No. 101 gives a recapitulation of the movement from Ohio points to Official Classification Territory, to some of the points shown in Exhibit 100. The recapitulation was taken from Witness Hunter's exhibit No. 18 in Docket 15912. For the 700 cars, the average mile haul was 187 miles; the average weighted rate 18.2 cents, under the Royster Scale it would have been 17.4 cents; average earnings per car mile 40.4 cents, under the Royster Scale it would have been 39.6 cents; average earning per [fol. 342] ton mile 19.4 mills, under the Royster Scale it would have been 17.4 mills.

My Exhibit No. 102 shows the actual movement from Baltimore, Md., to Ohio points as listed in Witness McCawley's Exhibit No. 34, Docket 15912, and contrasts the rates with the rates that would accrue under the Royster Scale. (Tes. 220-222.)

My Exhibit No. 103 is simply excerpts from the decisions of the Commission where they have had something to say with respect to the conditions, transportation conditions in the Southern Territory, as compared with the territory north of the River. There is one recent decision that I have not added to the list of those contained in that exhibit, and that is the Commission's decision in the Chattanooga

Manufacturers Association Case, 96 I. C. C., 481, decided March 10th, 1925, where at Page 482, the Commission states: "Owing to the greater traffic density and of population north of the Ohio River than south thereof, the rates over the lines north of the River have always been on a lower level than over those in the Southern Territory."

Concerning whether I am prepared to say that that is true as to the commodity rates: We have some commodity rates in the Southern Territory that are lower than the rates in the Trunk Line and C. F. A. Territories, competitive situations have brought those about; it is probable that there will be some suggestion offered in Docket 17000 respecting the nature of those commodities.

Comparing the rates on lime in Southern Territory with the rates on lime in C. F. A. Territory, the rates in the Southern Territory on lime are less than the rates which the Commission prescribed for application in C. F. A. Territory. Now, in connection with that lime situation, the competitive conditions in the South are similar to those surrounding the brick adjustment, that has been referred to in I. & S. 1885. The carriers are proposing to revise the lime rates in the South, but we can't hope to put them up where they belong on account of the competitive situation.

I am afraid I can't answer that our coal rates are often lower in the Southern Territory than they are north; I handle very few coal adjustments.

[fol. 343] "Q. Mr. Powell testified in the Eastern Class Rate Case that in many cases they were lower in the South.

"A. I am unable to say."

The citation to that last case I quoted is 96 I. C. C., 481.

I did not participate in that case. I am not familiar with the record in any respect; all I am interested in is what the Commission said.

"Q. You don't know whether or not the foundation for that statement was simply previous statements of like effect in earlier cases, without any reexamination of the present conditions?

"A. I can't tell, Mr. Cotterill, what was in the minds of the Commission when they made that expression, the facts I presume."

In so far as the South is concerned, where we carry rates in Southern Territory as to certain commodities that are lower, it is a situation somewhat like the brick case; we have gone a great deal lower on some commodities than we feel like we could have been required to go when it came to prescribing maximum reasonable rates; if we went that low on all commodities, we would have a bunch of receivers in the Southern Territory. It is just like the situation in the Brick Case, the Commission put our rates on brick in that case, under that so-called equalization proposition, they put us lower on brick in the Southern Territory than they did in the Central Freight Association. Like Commissioner Eastman, we think it was a mistake; we proposed higher rates. (Tes. 222-224.)

Concerning whether there is a tendency to compare rate levels in the different territories on the basis of the prevailing class rates, rather than the commodity rates, and that that comparison is somewhat misleading: I don't think I can answer that proposition, because I did not take part in 13494 actively, nor in the Eastern Class Rate Case, and I don't know exactly what comparisons they made.

By Mr. Quirk:

"Q. Mr. Gardner, haven't you as a witness, and haven't the railroad witnesses quite generally stated very fre-
[fol. 344] quently that comparisons of this kind are worthless when made by the shippers?

"A. I don't recall any statement of that kind."

I think myself in any comparison, you have got to have the circumstances under which those rates were published; take in the Southern Territory, our fertilizer rates, as I have shown, have been continually hammered down, especially in connections with situations over which we had no control. Now, in the Trunk Line Territory, I don't understand that that is correct, they haven't had the same situation in that territory as we have had in our territory, and of course that is one feature that we take into consideration. I think myself you have got to consider the conditions under which the rates were established.

As to whether I ever studied the conditions under which the class rates in Official Territory were established: I have

read some of the cases, particularly the citations in the Bluefield cases and the Wilmington Traffic Association Cases and the Charlotte Cases, the North Carolina Corporation Commission cases; from a competitive adjustment that is true.

I have shown certain comparisons of the rates in Southern Territory and the rates that we are proposing, as compared with the rates in the territory just north of the river. The consumption of fertilizer in the states of Ohio, Indiana, Maryland and West Virginia is far greater than the consumption of fertilizer in that limited portion of the Southwestern territory just west of the Mississippi River; my Exhibits 35 and 43 show that very clearly. Notwithstanding that situation, our friends of the fertilizer interest have insisted on, in appearing before the various State Commissions, and submitting their proposed scales, that the sole guide should be the rates prescribed by the Commission in that limited portion of the Southwestern Territory covered by Docket 9702. (Tes. 225-227.)

I have something to say with respect to that situation and the scale prescribed in Docket No. 9702, and the circumstances under which that scale that they offered the Commission as a standard for measuring these rates, was prescribed. In various proceedings before the State Commissions, the fertilizer shippers have repeatedly advanced as [fol. 345] a reason for a reduction of fertilizer rates in the Southern Territory, the fact that the Interstate Commerce Commission in the Memphis-Southwestern Case, Docket No. 9702, 77 I. C. C., 473, had prescribed certain rates on fertilizer for application in the limited territory just west of the Mississippi River. The contention of the fertilizer shippers has been in those state proceedings, that rates made somewhat less than the 9702 fertilizer rates would be reasonable for application in the Southern Territory. This contention was made before the Alabama Commission, and as justification for the reduced rates prescribed by the Alabama Commission, it is specifically stated in their report. This is the report of the Alabama Commission. And after that report came out, the fertilizer interests appeared before the North Carolina Commission and advocated the scale of the Alabama Commission, which was different from

the scale they had previously submitted to the South Carolina Commission. They have pointed to the scale prescribed by the Alabama Commission up to this time before the State Commission as being the sole standard for the rates that they are proposing. That being true, I will state what the Alabama Commission said as to the basis for arriving at the scale which they prescribed: "We believe that a just and reasonable scale of rates may be constructed by observing the Memphis-Southwestern Scale as a guide but using a somewhat lower level which we believe is justified and changing the gradation slightly to conform more nearly to our method of balancing the scales and distributing the burden of transportation.

Thus the Alabama Commission indicates that the Memphis-Southwestern Scale was their guide in reducing the Alabama rates. The fertilizer interests also endeavored to have the North Carolina Commission reduce the North Carolina rates because of the 9702 Scale; however, the North Carolina Commission has not made any reductions in the intrastate rates in North Carolina, which rates continue on basis of the Royster Scale.

The reasons advanced in the hearing before the South Carolina Commission for reducing the rates intrastate in that State were also the rates which were prescribed by this Commission in Docket 9702. At the last hearing before the South Carolina Commission, at Page 32 of the [fol. 346] Transcript, the counsel for the complainants, in addressing the South Carolina Railroad Commission, stated:

"Now, we are not asking you to make a further reduction in South Carolina simply because the Interstate Commerce Commission has explained away the significance of the Royster Scale. We are going back to our original position, taken on the original record, and now forming a part of this record, that on basis of comparative rate levels—the only test thus far the ingenuity of man has perceived—on the basis of comparative rate levels we contend now, as in the beginning, that the rate level west of the Mississippi River constitutes a fairer basis for the fixation of rates that the Royster Scale in this territory."

"Mr. McGehee: Is that the position of the fertilizer interests in this case?

"Mr. Cotterill: Yes."

Page 98 of the Record.

"Mr. McGehee: They predicate their whole case on the Memphis-Southwestern Case and he attaches great importance to it.

"Mr. Cotterill: I stand committed to it."

Obviously the reductions brought about in the various intrastate rates were predicated on the Memphis-Southwestern Case, prompted by the expression of this Commission in the Blackshear Case that the Royster Scale was not prescribed for final measure of rates to apply generally throughout the Southeastern Territory on fertilizer. It is with this situation confronting us that I have made a study of the 9702 Scale prescribed by the Commission and wish in this proceeding to explain the situation as I have found it. (Tes. 227-230.)

The rates on fertilizer in the Southwestern Territory, as the records of the Commission in the Virginia-Carolina Chemical Company Case, 16 I. C. C. 49, will show, were originally established. (Quoting from the Commission's Record:)

"For the purpose of enabling the Caddo Company to do 'missionary work,' that is, to build up its business in that [fol. 347] territory by bringing the farmers to a realization of the benefits to accrue from the use of that product."

Although low rates were established by the Southwestern lines to apply on fertilizer, the same rates were not published nor authorized to apply on such articles as cottonseed meal and nitrate of soda. The tonnage of the Southwestern lines on cottonseed meal being substantial, there was no necessity, as the records will show, for unduly low rates to encourage the use of that commodity. In the Shreveport Case, 48 I. C. C. 312 and 41 I. C. C. 83, the Southwestern carriers did agree, as a means of removing discrimination against Shreveport, to apply on fertilizer from Shreveport to Texas points the same rates as were contemporaneously maintained in Texas under the order

of the Texas Commission. They did not, however, agree to apply the fertilizer rates on cottonseed meal or nitrate of soda, the tonnage on cottonseed meal being substantial. Rates higher than the fertilizer rates were approved by this Commission on these commodities.

With the exception of the Virginia-Carolina Chemical Company Case, Docket 2617, reported in Volume 18 I. C. C. 1, I have been unable to locate any decision of this Commission where reasonable per se rates on fertilizer have been prescribed for the Southeastern Territory. It appears that in the Southwest, the cases involving fertilizer rates were of a discriminatory nature and very little consideration was given to the actual per se measure of the rates. The rates in the Virginia-Carolina Chemical Company Case brought up to date are in fact higher than the Royster Scale.

The rates fixed by the Commission in the Memphis-Southwestern Investigation, Docket 9702, were not prescribed as maximum reasonable rates, but were designed for the purpose of removing discriminations, Fourth Section departures and other inconsistencies in the former adjustment, and to preserve to the Southwestern carriers their aggregate revenues. Moreover, the rates fixed by the Commission in the Memphis-Southwestern Case were not prescribed for general application in the Southwestern Territory. These rates applied only in Louisiana, Arkansas, and Mis-
[fol. 348] souri. In fact, the rates on fertilizer in other portions of the Southwest are today higher than the 9702 scale.

In my Exhibit No. 104, there are quoted excerpts from Pages 500 and 501 of the Commission's report in the Memphis-Southwestern Case substantiating my statement that these rates were not prescribed as maximum reasonable rates. In this exhibit are also quoted excerpts from the various decisions of this Commission in connection with cases which were the outgrowth of the Memphis-Southwestern Case. (Tes. 230-232.)

Particular attention is directed to the quotation from Page 501 of the report of this Commission in the Memphis-Southwestern Case, wherein the Commission specifically states that the finding in Docket 9702 was without prejudice to whatever decision they may reach in connection with

Docket 13535, the Corporation Commission of Oklahoma Case, which was then pending before the Commission.

In my Exhibit No. 105, is a comparison of the Royster Scale with the fertilizer rates prescribed by the Commission in Docket 9702; and also with the cottonseed meal rates prescribed in Docket 9702, and the average of the fertilizer and cottonseed meal rates. It also compares the rates prescribed by the Commission in Docket 9702 on fertilizer and cottonseed meal, with the rates prescribed by the Commission on junk and scrap iron in the same case. It also shows the scale of rates which Attorney-Examiner Disque of the Interstate Commerce Commission recommends to be adopted for application on fertilizer in the Southwest.

Right in that connection the Alabama Commission used the Memphis-Southwestern Case as its guide in prescribing its rates for intrastate application in Alabama. The fertilizer interests in the various hearings before the state Commissions have adopted that same scale. It is perfectly apparent that the Alabama Commission in using that standard, assumed that that was the Interstate Commerce Commission's idea of a reasonable scale in Southwestern Territory. Since that case the entire situation has been reopened on the fertilizer rates,—not in that limited portion of the Southwestern Territory,—but as to the entire fertilizer situation, and is again before the Commission on a reopened record—that is the Consolidated Southwestern Cases.

[fol. 349] After extensive hearings in that case Attorney-Examiner Disque has made his recommendations as to what would be reasonable on fertilizer in the Southwestern Territory, while of course it is not binding, and of no final effect, it does show his idea as to what reasonable rates on fertilizer in the Southwest would be.

I know that the hearing in which Exam. Disque made his scale contained evidence about the fertilizer rates; it was offered I think by Mr. Johnson of the western lines—Mr. Johanson of the western lines, the Rock Island. The shippers were there; there was something said about fertilizer by a shipper, I don't recall who it was.

"Mr. Gwathmey: I personally attended the hearing, and it was largely attended by representatives of the shippers.

"Mr. Quirk: I understand the petition for rehearing has been granted by the Commission on a showing that the shippers were not properly represented, or at least did not take active part in that case, they did not appreciate what was going to happen, I mean, they did not take an active part.

"Commissioner Eastman: You mean that a petition for rehearing has been granted?

"Mr. Quirk: I understand it has.

"Commissioner Eastman: I don't recall that." (Tes. 232-235.)

Inasmuch as that question has been asked, I want to say I made an examination of the record in Docket No. 9702, as to the evidence with respect to fertilizer, and the entire evidence in Docket No. 9702 with respect to fertilizer, was very meager; the main testimony in that case for the fertilizer interests was given by Mr. Bosley of the Virginia-Carolina Chemical Company, and pertained particularly to the long haul rates, as I recall it.

Since Mr. Disque's report came out in the Consolidated Southwestern Case, the Commission has issued an order in what is known as the Arkansas Fertilizer Case, in which they extended the 9702 scale from Little Rock into points in Oklahoma and into Texas, and they specifically stated in the order in that case that their finding in the Arkansas Case was without prejudice to any finding that they may make in the Consolidated Southwestern Case, the same as they did in 9702.

[fol. 350] "Q. Yes, and isn't that qualification, if you may term it so, also injected into each and every decision, into each and every specific decision of the Commission in deciding southwestern cases since the Consolidated Southwestern Case was heard?

"A. Naturally, when the Commission has a general situation before them, they don't want to bind themselves on any one particular commodity.

"Mr. Roberts: It was not specifically applied to fertilizer cases."

It will be observed from this exhibit that unlike the rates on fertilizer in the South the Southwestern Scale on cot-

tonseed meal is substantially higher than the rates prescribed for fertilizer. In the Southern Territory, the cottonseed meal is on the fertilizer basis. The average of the fertilizer and cottonseed meal rates prescribed by the Commission in Docket 9702 for distances over 10 miles and under 110 miles is substantially the same as the Royster Scale, while for distances over 110 miles the average of the fertilizer and cottonseed meal rates prescribed in 9702 is substantially higher than the Royster Scale. The rates on junk and scrap iron prescribed in 9702 are on a higher basis than the rates prescribed in that proceeding on fertilizer. The fertilizer rates did not apply on nitrate of soda.

In my Exhibit No. 106, I have compared the Oklahoma-Texas Scale published in Agent Leland's Tariff I. C. C. 1590, applicable on fertilizer, and does not include cottonseed meal or nitrate of soda, with the 9702 scale, and with the Royster Scale, both single line and joint line. (Tes. 235-237.)

In my exhibit No. 107, I have compared the Texas intrastate rates published in Agent Fonda's Tariff I. C. C. 174, single line and joint line, with the 9702 scale, and with the Royster Scale. The rates under the Texas Scale did not apply on nitrate of soda or on cottonseed meal; higher rates prevail on those commodities.

In Exhibit No. 105, the last page is shown on Page 2; in fact it should be Page 3.

In my Exhibit No. 109, I contrast the rates recently prescribed by the Interstate Commerce Commission on nitrate [fol. 351] of soda for application from New Orleans, La., to Arkansas points in the New Orleans Joint Traffic Bureau Case, 89 I. C. C., 223, with the rates on fertilizer under the 9702 scale and the rates on fertilizer under the Royster Scale. You will note that throughout the nitrate of soda rates that the Commission prescribed as being reasonable for that Western Territory are substantially higher than either the 9702 scale or the Royster Scale on fertilizer.

In my Exhibit No. 110 there is an excerpt from Attorney-Examiner Disque's tentative report in the Consolidated Southwestern cases, dealing with the matter of fertilizer.

In my Exhibit No. 111, I have reconstructed the rates prescribed by the Commission in the Blackshear case, by

observing the same differentials over and under the 9702 scale that was reflected in the rates that the Commission itself prescribed, and used that basis of reconstructing the scale under the rates recommended by Attorney-Examiner Disque.

In my Exhibit No. 112, I have tabulated from the preliminary abstracts of the Commission, the fertilizer tonnage, which includes fertilizer material also, transported and originated by the three districts in the United States, the Southern, the Eastern and the Western Districts. Of course, the Western District as I understand it includes the territory, the Western Trunk Line Territory and the entire West, and not only the Southwestern Territory. I call attention to the tonnage originated figures for the year 1923; the Southern territory, of fertilizer and fertilizer materials originated, amounted to 1.61 per cent of the total tonnage; the Eastern Territory, .46 per cent; the Western Territory, .20 per cent. That .20 per cent does not include the cottonseed and meal cottonseed products.

In my Exhibit No. 113, I contrast the rates, the car mile earnings and the per car earnings on fertilizer, under the Royster Scale, based on the average loading of 23 tons, which was the average loading of the Southern Railway for the year 1923, with the rates on slag and stone, as prescribed by the Commission in the Duquesne Slag Case, 92 I. C. C., 554, using the average loading for slag as referred to by the Commission in their decision. I also ask atten- [fol. 352] tion to the excerpts from the decision shown at the end of the exhibit. (Tes. 237-239.)

In my Exhibit No. 114, I show the rate, per car revenue, and per car mile revenue, on fertilizer, based on the average loading of 23 tons, as compared with the intrastate rates on stone between points in South Carolina. Although for distances over 100 miles, or in fact the stone per car earning approximate very closely the earnings under the Royster Scale on fertilizer with an average loading of 23 tons.

I don't know that, in view of the heavy loading of crushed stone, if you make your comparison on a per car basis or a per car mile basis, you can show that the rates on crushed stone are relatively higher than the rates on a

great many commodities of much higher grade from a traffic standpoint, because those stone rates are ridiculously low, and they are made low on account of that loading. It is true that we do not make our rates on fertilizer with relation to stone, but it occurred to me that a comparison of that kind would be at least persuasive that the Royster Scale was not too high.

"Q. Well, I had in mind a comparison in a case that I was looking over the other day, where sand rates in Central Territory were compared with the rates on a great many different articles, and it showed that on the per car mile or per car basis, the sand rates were a good deal higher than the other rates; that was largely due to the heavy loading; if you put this stone comparison that you have got in your Exhibit 114 on a per ton mile basis, you would get an entirely different result, wouldn't you?

"A. That is correct, yes sir." (Tes. 239-240.)

Exhibit No. 115 is a comparison of the Southern Railway's Carolina Lumber Scale applicable between points in Carolina Territory east of Atlanta, with the rates under the Royster Scale on Fertilizer. On lumber, the average loading is slightly in excess of that of fertilizer.

My Exhibit No. 116 is a comparison of the specific commodity rates from South Carolina points to North Carolina points on lumber, with the rates for similar distances under the Royster Scale on fertilizer.

[fol. 353] Exhibit No. 117 is a comparison of the rates on lumber from Carolina points to the Virginia Cities, with rates on fertilizer for comparable distances.

Exhibit No. 118 compares the rates, per car revenue and per car mile revenue, on sulphuric acid from Copperhill, Tenn., to southern points, with the rates, per car mile and per car revenue that would accrue using the Royster Scale for similar distances. (Tes. 240-241.)

The loading of sulphuric acid is shown on Page 3; the average loading on sulphuric acid was 48 tons. I also call attention to an excerpt from the Commission's decision in the Copperhill Case, where a good many of these rates were fixed.

Exhibit No. 119 is a similar comparison, only using Grasselli, Ala., as a point of origin.

Exhibit No. 120 is a comparison of the rates on asphalt from South Atlantic and Gulf Ports, showing the rate, revenue per car and per car mile, and what the revenue would be on fertilizer for similar distances, based on an average loading of 35 tons on asphalt and 23 tons on fertilizer.

Exhibit No. 121 is a comparison of the rates, the per car revenue and per car mile earnings on roofing slate from Ohio River Crossings to southern points, with the rates on fertilizer and the earnings on fertilizer for comparable distances; the roofing slate earnings being based on 49,000 pounds, and fertilizer on 46,000 pounds. There is a typographical error in that average loading of fertilizer; strike off the last zero there. Now, there is quite a movement of salt in carload quantities from Norfolk, Va., to Carolina points, it is imported salt, brought in from the Mediterranean ports and reshipped from Norfolk to Carolina points. In Exhibit No. 122, I have contrasted the rates on salt from Norfolk to Carolina points, the per car revenue and the car mile revenue, with the rates on fertilizer for similar distances; the salt loading being 48,000 pounds and the fertilizer loading 46,000 pounds. According to a report of the Commission in the recent salt case, the value of salt is from four to six dollars per ton.

My Exhibit No. 123 compares the rates, revenue per car and revenue per car mile, on petroleum from the Ohio [fol. 354] River and South Atlantic Ports to southern points, with the rates, revenue and per car mile earnings on fertilizer for similar distances; the average loading of petroleum being 60,000 pounds, and fertilizer 46,000 pounds, that being the average loading on the Southern Railway for the year 1923.

Exhibit No. 124 contrasts the rates, revenue per car and per car mile under the Royster Scale, with the rates which the Commission prescribed on cement for application in C. F. A. Territory; the cement average loading being 40 tons, as referred to by the Commission in the Atlas Case, 81 I. C. C., 1.

Exhibit No. 125 is a comparison of the rate, per car and per car mile earnings on fertilizer under the Royster Scale, with the rates on cement intrastate in North Carolina. These cement rates in North Carolina were recently approved by the North Carolina Commission, and are in fact

the rates which the Southern Carriers are today proposing for application uniformly throughout the Southern Territory. (Tes. 241-243.)

There is a case pending dealing with that.

Exhibit No. 126 is a comparison of the rates, the per car revenue and the per car mile revenue on wall plaster from Norfolk, Va., to Carolina points, with what the rates, per car revenue and per car mile revenue would be under the Royster Scale; the average loading on plaster being 52,000 pounds, and on fertilizer 46,000 pounds. You will notice Page 3 of the exhibit shows cement instead of fertilizer.

Exhibit No. 127 is a comparison of the rates, per car revenue and per car mile revenue on coal under the various rates fixed by this Commission, with the rates that would accrue on fertilizer for similar distances. I have used an average loading of 50 tons for coal and 23 tons for fertilizer.

Exhibit No. 128 is a comparison of the rates recently prescribed by the Commission for application on animal manure from Perth and Lovelock, Nev., to eastbound transcontinental territory. I call particular attention to the expression of the Commission at Page 511 of the report which is reproduced at the foot of this exhibit. For 1,412 miles, the Commission ordered a rate producing 3.4 mills per [fol. 355] ton mile, and 25.2 cents per car mile; the average loading of manure being 60,000 pounds, and on fertilizer it would be 22 tons. You will notice under the Royster Scale, shown just at the right of the exhibit, for a joint haul of 500 miles, the Royster Scale would be $5.74, ton mile earnings 11.5 mills, car mile earnings 26.4 cents; while for 600 miles, the rate under the joint Royster Scale would be $6.30, 10½ mills per ton mile, and 24.1 cents per car mile.

"Commissioner Eastman: You ought to quote from Commissioner Hall's descending [dissenting] opinion in that case.

"Mr. Gardner: Yes sir, I have got another exhibit that follows, that substantiates what Commissioner Hall said."

The rates shown in my Exhibit No. 128, according to the Commission's decision, were arrived at by extending the manure scale which the Commission had prescribed for application from Nevada to the California orchards in 95 I. C. C., 430, and 73 I. C. C., 496, which has been shown in my

Exhibit No. 129. I have taken that scale which the Commission extended to find a reasonable rate for manure moving to eastbound transcontinental territory, and compared that with the Royster Scale. Take the single line manure scale, if you please, for 775 miles, the rate is $7.18, miles per ton mile 9.2; and turn over to Page No. 2, and look at the 975 miles per ton mile earnings, and I think Commissioner Halls' dissent in that case, to the effect that the joint haul rates were ridiculously low is pretty well supported. The Commission recently, on April 25th, 1925, handed down a decision in the Jones-Laughlin Steel Corporation Case, Docket 15110, in connection with which they prescribed a mileage scale for application on manufactured iron between points in Central Freight Association Territory. I have taken that scale which the Commission prescribed, and contrasted it with the Southern Carriers' proposed fertilizer scale, earnings per car and earnings per car mile. The average loading of manufactured iron, as indicated in the report of the Commission, which is a mimeograph report, was 30 tons, and the average loading of fertilizer, 23. I ask attention to the difference in the per car mile earnings, the car mile earnings on the iron being substantially 100 per cent greater than under the Royster Scale.

[fol. 356] By Commissioner Eastman:

"Q. Well now, if a shipper puts in a comparison like that, don't you think Mr. McGehee would refer to it rather caustically in his brief?

"Mr. McGehee: If it hurt me, I would."

Being a mileage scale it prompted me in making that comparison, having a mileage scale in C. F. A. Territory was something unique, the Fifth Class basis having applied for so many years, that is what prompted me in making that comparison. It is offered for what it is worth. (Tes. 243-246.)

Exhibit No. 131 is an excerpt from various decisions of the Commission wherein they have commented on the value of per car mile earnings. Although the carriers' proposal contemplates, at least at present, the application of the same rates on cottonseed meal as on fertilizer, I thought probably the Commission would like to have some information as to the values of these two commodities, probably

it might not agree with our proposal, so I secured from the Handbook of the Department of Agriculture, the values of bran and cottonseed meal, both being feeds, from 1910 to and including 1923, and I show them in my Exhibit No. 132. In that connection, it may be interesting to note that, according to the government statistics, compiled in 1914 for the United States as a whole, that 65 per cent of the cottonseed meal was then being used for feed purposes; now, since 1919, the Government Departments tell me they have kept no separate statistics as to the amount of cottonseed meal consumed by the fertilizer industries, but in their 1914 census of the United States manufactures and of 1919, it shows the fertilizer industry in 1914 consumed 325,234 tons of cottonseed meal, and in 1919, 230,526 tons. I do know from personal investigation that the consumption of cottonseed meal for fertilizer purposes is gradually decreasing.

By Mr. Tench:

"Q. Mr. Gardner, that report does not take into consideration, does it, the number of cars of cottonseed meal that are shipped by the farmers direct, that undertakes to take in the manufacturers' reports.

[fol. 357] "A. Used by manufacturers.

"Q. Yes; that does not as a fact cover the whole situation by any means?

"A. No, as I stated, it is the manufacturers. Exhibit No. 133 gives the prices of cottonseed meal at the various markets during the year 1923.

"Exhibit No. 134 gives the price at Memphis." (Tes. 246-247.)

It is my opinion that cotton is about one of the outstanding commodities that the carriers have to transport at a very great expense; taking into consideration the floating of one or two bales into the compress, and the service that we have to perform at the compress point, and things of that kind, I think cotton is one of the most expensive commodities that we have to handle. I think it is greater than on fertilizer.

The movement of fertilizer being seasonal and owing to the fact that the principal manufacturing plants and shipping points are located at terminals where our outbound

business is considerably heavier or in excess of the inbound movement, it has been necessary to assemble empty box cars and haul them to point of shipment and there store or hold them in readiness so as to move the fertilizer promptly. Fertilizer, as indicated, is a seasonal traffic and must move immediately during a period of approximately 60 to 90 days. The necessity of assembling equipment at the fertilizer shipping point results in a heavy per diem expense which naturally decreases the revenue derived from the fertilizer traffic. (Tes. 247-248.)

For example, at Charleston, S. C., one of the heaviest shipping points of fertilizer on our line and where the outbound business is normally considerably in excess of the inbound traffic, it is necessary to assemble equipment for the movement of fertilizer before the season starts. At the beginning of the season it is necessary to assemble and haul to Charleston approximately 600 box cars and there store or hold them in readiness for shipment at the usual per diem rate of one dollar per day, to say nothing of the loss to us of the equipment for other commodities.

Right at that point in connection with the rate of one dollar a day, the per diem rate, that is not the rate that was prescribed for the purpose of showing the expense of [fol. 358] owning a car per day; as I understand it, it was arrived at covering the depreciation on a car, and what the correct value of owning a car to the carrier was.

"Q. And the expense of maintaining it; in other words, in a recent case of the Blue Ridge Railroad Company, the Commission itself found that the expense of owning a car is one dollar per day?

"A. I understand so, approximately.

"Mr. F. E. Harrison: Isn't it also true that the carriers hold their own equipment and dispose of the foreign equipment?

"Mr. McGehee: When business is dull, yes, when it is good, they try to get all the equipment they can.

By Commissioner Eastman:

"Q. In view of the fact that the per diem is not supposed to cover a profit, why is it that so many companies are desirous of purchasing equipment for the purpose of getting rid of the per diem payments?

"A. I can't answer that, Mr. Commissioner, I don't know why they want to do it.

"Commissioner Eastman: They say they want to do it to save money." (Tes. 248-250.)

The impression of the Commission in the Blue Ridge Case was that it costs the carriers at least one dollar a day to own the equipment, to keep it up. I have not made any figures at all to verify that dollar a day.

"Commissioner Eastman: I think if you will look at the reports of the Seaboard Air Line Railway lately, you will find that they take great credit to themselves for having increased their supply of cars and diminished their per diem payments."

Per diem is a reciprocal arrangement, and I understand that the carriers settle with each other on debit balances, and credits. There certainly is special significance to the statement that we pay a dollar a day for the foreign cars on our line when we are earning a dollar a day for our cars on other lines; you take, for instance, suppose we have got a thousand cars of some other folks on our lines, and [fol. 359] we are holding up 600 cars at Charleston idle during the fertilizer season, and we are using that foreign line equipment, whereas we could have been using our own equipment and saving that per diem.

"Q. Don't you think, in order to have that kind of testimony of any value to the Commission, you ought to show for the time you are covering, the percentage of car ownership on your line?

"A. The Commission already has that.

"Mr. McGee: I don't think personally, so far as this case is concerned, I think that is a mere detail that would not warrant that much work; that is my view about it.

"Mr. Quinn: You have dragged it in.

"Mr. McGee: No.

"Mr. Cotterill: I think the accounts show the reverse of that condition, my impression is the Southern Railway is generally shown as a credit carrier." (Tes. 250-25[illegible].)

After the fertilizer shipping season begins, it is necessary to have available at Charleston during the fertilizer season

some 400 serviceable cars, 150 to 200 daily to be placed at 16 fertilizer plants and approximately 200 must be held in readiness for placing as fast as loaded cars are moved from the plants. In addition to this, the expense of switching to and from these fertilizer plants is heavy. In this connection, attention is directed to the Commission's decision in the South Carolina Fare and Charges Case, 60 I. C. C., 290, Page 301, where it is indicated that the cost of switching a car to and from these industries at Charleston amounted to $5.94 per car.

A study has been made at Charleston, S. C., with respect to the delays to cars held at that point for the fertilizer movement and during the first part of the 1924 fertilizer season, that is, from December, 1923 to April, 1924, the average delay at Charleston was 7 days per car. This seven days covers the time the car reaches the terminal at Charleston to the time it is loaded and moves from Charleston and covers only the fertilizer traffic. It does not include the time entailed in moving the cars empty into Charleston from origins on the various divisions.

The situations at Savannah, Columbia, and Augusta are similar to Charleston. (Tes. 251-252.)

[fol. 360] Cross-examination:

Concerning the organization which has been set up to make the traffic tests for the purpose of this case: Each carrier, as I understand it, is to secure actual movement of their lines, and rerate the tonnage. In the determine of what traffic would be affected by new rates, growing out of this proceeding, so far as the Southern Railway is concerned, it used the list of articles, with reference to the future, that was submitted in Exhibit 3.

I do not recall any commodity tariff that authorized the fertilizer rates on commodities not contained in that list.

If there is such a thing, I think now is the time that you people should give it to us.

That test is embracing a rerating of the intrastate traffic, on the assumption that the rate level here under consideration has for its object the fixation of the rate level appropriate for both State and interstate application; they are rerating the State as well as interstate business.

"Q. Now, as to those tariffs which at this time constitute the rates on imported material, the application of

which is in terms limited to imported materials, I presume there can be no misunderstanding between us, that those rates and the traffic moving under them, are to be embraced within the test?

"A. Well now, candidly, Mr. Cotterill, I did not understand that this investigation took in the importers." (Tes. 253-255.)

"Com. Eastman: I might say on that, that the order as drawn, I think, does not cover import rates, and as no mention is made on foreign commerce, but on the other hand the order does not cover intrastate rates either, except in Georgia, South Carolina and Alabama, and they are going to rerate those on the traffic test, and I think it would be desirable to include the import rates also, so far as the test is concerned, if you are inclined to change this in harmony with the domestic rates." (Tes. 255.)

As to what is the season of the heaviest freight traffic—all traffic—movement in Southern Railway territory: Having made no investigation of that I would not care to offer any suggestions. It would be a guess on my part. I am not familiar with the seasonal variations of traffic—freight [fol. 361] traffic—to the extent that I could testify on that, without further investigation. It naturally follows that there are periods during which the traffic density is materially greater than during other periods in the year. It is our effort to have the facilities of the carriers adequate to take care of the peak load.

I presume there must be other periods during which there is a surplus of equipment. Regardless of when it may be, during that period of surplus, the freight cars are stored on all available sidings. As I testified, beginning of the fertilizer season, we have to gather these cars—600 in number, to put them down at Charleston, for instance. We have got to keep on hand at Charleston some 300 cars to take care of the 16 fertilizer plants located at that point. Now, we are continually handling empty equipment into Charleston during the fertilizer season. Now, the assumption on your part that there is a surplus supply of equipment during that season is not borne out by the investigation have made, that it is necessary to handle that equipment into the port. As to whether, in making that investigation my studies went far enough to enable me to determine

whether during that period of fertilizer movement normally there is a car surplus, and that the equipment which we assign to that movement is equipment which otherwise would be parked and stored on available side tracks: I went to this extent in my investigation. In connection with the Charleston movement, 600 cars were held at Charleston. I made the inquiry of that supply of cars we are holding at Charleston, what effect does that have on the cars necessary for handling the other commodities. The transportation department conference men told me that when they have to have surplus supply at Charleston to take care of the fertilizer movement, it takes that much equipment out of the general line of business. That they have to handle and keep on the line foreign equipment that they would not otherwise have to keep on the line, if it was not for holding these cars at Charleston, to take care of the seasonal traffic. So, if there was a surplus of equipment, well that would not be true. (Tes. 256-259.)

My investigation did not convince me that the equipment which we do accumulate at Charleston is all company-owned equipment; as much as we could possibly keep into [fol. 362] that fertilizer movement is—it is just one continuous movement. A large per cent of it is mostly company-owned equipment.

In times of car surplus it would seem to be efficiency for the carriers — try to rid themselves of foreign-owned cars. I imagine it would be proper during the period that they did not need them to park their own cars, which are not needed, put them on side tracks. (Tes. 259.)

My investigation was not complete enough to enable me to say whether the period of fertilizer movement corresponds with the annual surplus of all equipment, and to the fact that during that period of surplus, equipment assigned to the fertilizer business is mostly company-owned equipment. The extra cost I spoke of in connection with the fertilizer movement is not distributed throughout the year, but occurs or piles up in one or two months. As to whether in view of that fact the carriers think it good business or would they be willing to make a lower rate applicable on fertilizer in other months of the year in order to encourage and induce the movement of fertilizer traffic during that period: We are opposed to seasonal rates. I do not think that would have the effect of spreading the traffic and en-

courage the farmer to get his fertilizer in ahead of time. As my experience goes, the farmer waits until the last minute to buy his fertilizer. He won't buy ahead of time; I don't care what encouragement you give him. Of course, a good many of them have to buy it on credit. If they buy it ahead of time they have got that interest to pay on the money they use to purchase the fertilizer. So even if he had the seasonal rates, I don't think it would be of advantage. We have never tried it to see what the effect would be.

Concerning the element of extra expense involved and what I mean by extra expense: Take Charleston, for instance. Fertilizer industries are located, oh, about 10 or 16 miles away from Charleston. We have got to gather that traffic from those fertilizer industries in order to make up the trains. That switching expense at Charleston is very heavy. That is 15 miles from the yards, or from Charleston. I think that classification at Charleston is done at the seven-mile station; I am not sure. I don't know [fol. 363] whether the fertilizer companies as a rule furnish their own switching locomotives and crews between their plants and our lateral tracks. Seven miles is the point at which the classification yards are located, I believe. The delay of this equipment naturally has to be taken into consideration—in holding it, parking it at Charleston. I did not have reference to the delay by fertilizer plants in loading the equipment after they get it placed at their plants when they get ready to ship fertilizer—and have got orders for it—and order the cars shipped in there, they usually ship pretty promptly. They load it as fast as we can switch the cars out of the track, and that keeps the switch engine there partly to perform that service. You cannot use equipment that has handled fertilizer for any other commodity. You can use it for sand, scrap iron, or something of that kind. (Tes. 260-263.)

As to the relation that has to extra expense: A good many of the cars have to be cleaned. I think those are the important items. Back-haul empty movement is in connection with the equipment feature which I mentioned. As to whether, outside of Charleston and, conceivably, Savannah, there are any other fertilizer manufacturing plants in the South where these conditions are that I have de-

scribed: To a certain extent some of the interior factories have considerably delayed equipment. I have made no detailed investigation as to any other place where a haul of 7 or 15 miles is involved before the classification occurs; I don't want to answer offhand, without having made the investigation as to each point. The condition described at Charleston is typical for Charleston; I think it is comparable with Savannah, and probably Norfolk and some of the interior points; probably the switching is not as great as it is in Charleston. With reference to what the carriers do in respect to cleaning the cars that cost money: They have to wash the car out. I don't want the record to indicate that we wash out every one of those fertilizer cars. That is absurd, but you take a fertilizer car that you are going to put in for merchandise, or something of that kind, you have to clean that car. I don't want to leave the inference that every one of them is cleaned. The equipment we try to keep in the fertilizer trade particularly for that [fol. 364] reason—of course that is not cleaned every time it makes a trip. You take Savannah and New Orleans—now, I have had occasion to investigate the situation down there in connection with the sugar case. We have kicked into the plants at New Orleans and also Savannah, equipment for loading sugar that has been previously loaded with fertilizer. Notwithstanding that those cars had been cleaned, the sugar people positively refused to load sugar into the cars, after having been cleaned. As a general rule, we do not clean fertilizer cars. Even when we do clean them, I have no idea what the cost is of cleaning the car. You would have to wash the car—flush it by putting a hose in it, and scrub it. I am not qualified to say whether it would take a couple of hours at the outside. That is one of the least of the items I had in mind in speaking of the extra expense. (Tes. 263-267.)

I don't know whether or not 15 miles is an unusual distance between the point at which the car is loaded and the place at which it may commence its line haul movement; you have to take your weighted average, I don't know what is. Of course, you may pick some point like Birmingham for instance and find particular plants that are located at one end of Birmingham, and another plant at the other, would be about 5 miles, but that does not indi-

cate that the traffic from Birmingham is always handled from that 6-mile haul. You take that fertilizer business at Charleston, it does not mean that you are handling that for your 15 miles at that point. Similarly at other places, the switching lengths might be greater than 7 or 15 miles, or less than that. I can't answer right now as to any instance where it might be greater; there is no conspicuous illustration, because I have made no investigation to develop it. I don't know the number of system box cars our company owns; I would not venture to estimate. I suppose 600 box cars is a comparatively small percentage of our system-owned box cars. I don't believe the fertilizer has moved direct from the factories to the farm this year. The fertilizer this year, as I understand, is being handled by a broker. Now, whether he takes the order, and has the fertilizer shipped to the farm direct, I don't know. Naturally to some extent it is shipped from the factory to [fol. 365] warehouses and distributed out of the warehouse. With that being the case and concerning whether the traffic can be equalized to some extent: As I stated, we are called upon to handle that traffic within about 60 or 90 days. Now, whether a system of that kind could be worked, I think the fertilizer people can tell us better than I can. The movement between the factory and the warehouse always occurs at this time of heavy fertilizer movement, along with the other movement. I have heard it to be a fact that the man who is buying fertilizer from the manufacturer, if he has not a warehouse of his own, ordinarily he puts it in a cotton warehouse and then, when he sells a ton of fertilizer to a farmer, he gives the farmer an order on that local cotton warehouse, and he goes there and gets his fertilizer, and the fertilizer dealer pays so much per ton per month, for the privilege of storing this fertilizer in that warehouse. There has been a good deal of argument as to who pays the freight on that car. I think the consignee pays the freight bill—the consignee is the jobber; to whoever it is consigned. As a matter of fact, fertilizer is not moved out of the ports, where it is purchased in large quantities, throughout the year and stored at warehouses near to the point of distribution and shipped from there in the season when it is used. (Tes. 267-270.)

Concerning something persuasive as leading to any necessary conclusions between a comparison of the earnings per car, or per car mile, on an article loading 20 tons, and another loading 40 tons: The value of your equipment to you, the earning capacity of the equipment. It is absolutely not so that on all the exhibits submitted by me, the rates per ton, on fertilizer, appear to be higher than the rates per ton on all the other articles with which I make comparison; on the low grade commodities, such as sand and gravel, the fertilizer rates are higher per ton than the rates on those commodities, but there are a good many exhibits in here that I have filed, in which the rates per ton are comparable with the fertilizer rates. (Tes. 270-271.)

"Q. Do I understand that in a given case, where you find a difference between the per car or the per car mile earnings on two commodities, that your mind at once then con-[fol. 366] cludes that one or the other, or both of those rates are wrong, and that a new rate would be right?

"A. Not necessarily, no. That is one of the considerations that influence you in making rates."

I have shown on each one of those exhibits the value of each commodity—the commodity that is loaded in the car. The Southern Railway doesn't make rates by having a predetermined standard of carload earnings to which it aspires to bring the rates on individual commodities, so that they will each yield something approximating that standard. As to how, if we don't make rates that way, a difference in those earnings per car demonstrate whether either of two rates is wrong at all: I feel it is very persuasive. It may not be conclusive, but it is very persuasive. The rates are not made that way even though it is very persuasive; that is not the controlling factor. You take on low-grade commodities, maybe the per car earnings and per car mile earnings have more control than on higher grade traffic. If you are confronted with the fact that one article yields more per car mile earnings than the other, still neither may be wrong; there are other circumstances that enter into it. I think those exhibits are very persuasive as to the reasonableness or propriety of a freight rate level on fertilizer,

If I thought that they alone sufficed to demonstrate any necessary conclusion, I never would have made the other analyses.

"Q. Then, we come at once to the other theory, Mr. Gardner, in which you have compared rates on fertilizer in the South with rates on fertilizer in some other territories. I think that was the second, or at least is one of the other of your theories.

"A. That is the particular theory you laid before the South Carolina Commission, to get our rates reduced." (Tes. 271-275.)

As far as the 9702 scale goes, I disputed that theory. And I dispute it now. In 1914, and immediately prior thereto, Southern Classification contained 10 classes, as I recall; six numbered and four lettered classes. I won't subscribe to saying that Class A was used less than the [fol. 367] other of the lettered classes. I have made no investigation to determine that, of the business moving under Southern class rates, something in the neighborhood of 70 or 80% is less than carload business. I have heard rumors as to the proportions of tonnage and revenue moving under class rates in the South, at that time and now. I don't know whether it was true in 1914, or now, that the overwhelming tonnage and revenue of Southern carriers derived from freight transportation comes from commodity rates; I have made no investigation of that. I have no business to testify to that as being facts.

In Official Classification Territory the bulk of the business moves on class rates. It is true that on many heavy commodities in the Southern Territory they move on commodity rates. Speaking of the fertilizer involved in this case, as I testified in this proceeding prior to the Commission's decision in the Royster case, which was in 1914, as you are speaking of, we were maintaining substantially higher than the third Royster scale on fertilizer, especially in the Carolinas, which was cut out. They were higher, probably than the rates in the Trunk Line. The Commission reduced those rates for us, and in the Royster cases controlling the Carolina situation particularly. In other states, even at that time, the fertilizer rates themselves

were less than in North Carolina. I think the Commission's decision in 3866 will speak for itself.

"Q. Now, in order that the record may be technically complete, is it not a case, that subsequently to 1914, so far as Southern Classification Territory is concerned, there were but two general advances, and each was 25 per cent?

"A. You are speaking of all commodities?

"Q. Yes, of course, there are certain articles as to which there are arbitraries.

"A. I know of one, there was an advance under Ex Parte 57 in the South." (Tes. 276-278.)

Speaking only of the percentage advantages, intraterritorially it is correct that there were two 25% advances in the South; G. O. 28 and Ex Parte 74, with a subsequent decrease of 10%. In Official Territory, omitting for the present reference to the changes which were produced by the [fol. 368] Disque Scale, the percentage advances, commencing in 1914 and subsequently, were: 5% advance in class rates; the 15% case—I am not sure if that was applicable to commodities as well as classes; G. O. 28; Ex Parte 74—that was a 40% advance in Trunk Line Territory and Official Classification, and the total was later decreased 10%. It is mathematical that that leaves the Southern rate structure, so far as advances are concerned, approximately 40% higher than 1914. I have not verified your ratio that it leaves the Northern advances approximately 90% higher than 1914.

"Q. Have you undertaken, Mr. Gardner, at any time in the past, or in connection with this case, to determine how the so-called Royster scale itself compares at the time of its commencement with the then existing 6th class rates in Official Classification Territory?

"A. No, I was interested in the present rates. Rates that are now moving the traffic, today."

In Southern Classification Territory the carriers have not thus far sought to advance the charges on clay products within the South in part because of higher rates on those products in the North; absolutely not. They have sought to put the clay product rates on a reasonable basis, and

the Commission, in I. & S. 1885, would not let us do it. We used the higher rates in the North as one of the justifications for the attempted advance; we used that as a comparison, the same as you have used many comparisons to get these fertilizer rates hammered down. (Tes. 278-281.)

I think the Commission's decision in the North Carolina case fully explains why those North Carolina rates are so low. The intrastate rates in North Carolina were the result of the Justis Act in 1914. They were not voluntary rates, and they were not rates that the carriers have ever thought were proper. I cannot tell you what was in the minds of the Justis Commission when they knocked off about 25 or 30% of our revenue in North Carolina in 1914. I have made no comparative study of the commodity rate level on every commodity in Carolina territory as compared with the remainder of the South, but we have some mighty low rates in North Carolina. I cannot subscribe to the statement at all that the commodity [fol. 369] rates in the Carolina Territory are today broadly higher than in the remainder of the South, because I know that the lumber rates in the Carolinas are not higher than they are in the South. It is my judgment that the level of the rates in the Mississippi Valley are less than they are in the Carolinas, but Mr. Cotterill was dealing with the Southeast. (Tes. 282-284.

I would not say the same thing as to the difference between the South and the Carolinas. I know the North Carolina Commission has reduced a good many of those commodity rates in North Carolina to basis below the Southeastern scale. There has been no occasion calling upon me to make the comprehensive comparison on the entire situation so far. I have made no investigation as to the total freight earnings of the Southern Railway System. One of Mr. Menzies' exhibits did not give the percentage of tonnage and revenue which fertilizer bears on the Southern. The Commission does not require the carriers to keep revenue figures on commodities. It is only recently the Southern has undertaken to keep any revenue at all on any particular commodities, and we did that in a test during the period January to July, 1924, and that is the latest I have, and it takes in the fertilizer season. That is both tonnage and revenue. The fertilizer tonnage for that

period was 4.20% of the total tonnage. The revenue was 3.63% of the total revenue. That is the total freight revenue. We gave the tonnage figures on the Southern Ry. in 1923 in one of our exhibits. We keep that. Commission's Classified Report requires that, but they do not require the same tabulation as to revenues. (Tes. 284-286.)

"Q. It appears from what you have just said that the fertilizer tonnage was the larger per cent. of the total tonnage in 1924 than in 1923.

"A. First seven months, you see that takes in, Mr. Commissioner, the heavy fertilizer season, which is seasonal, you see. That probably accounts for that discrepancy."

There is no detention of the cars at Charleston, so far as the Southern is concerned, after the cars are loaded. I [fol. 370] do not know how that compares with the detention on the whole line.

Cottonseed meal does not take the fertilizer rates in the West. The cottonseed meal tonnage is not shown in this statement in Southern Territory. I gave 2 lists from that exhibit of the commodities which the Commission used in their statistics on common carriers. I merely copied what the Commission had used, and put it in statement form, and at the bottom of the exhibit, I think I tabulated the commodities that the Commission used. Fertilizer material rates do not necessarily mean cottonseed meal. Cottonseed meal takes the fertilizer rates, it did not take the fertilizer material rate. I think the Commission's reports will speak for themselves as to whether cottonseed meal is included; I don't think they are included. (Tes. 286-288.)

Referring to Exhibit 80: There is no appreciable movement of complete fertilizer from Ohio River points moving from 400 to 800 miles into the Southeast. The principal movement from the Ohio River is materials, and in the past there has been a fair movement of tankage, but I understand in recent months or years that the movement of tankage has not been as substantial as in the past. That the fertilizer mixers, as I understand it, have succeeded in getting their ammonia content from sulphate of ammonia, or commodities other than tankage; that is my information. I wanted to show exactly the situation from the Ohio River, that is all; I did not even intimate there was a heavy tonnage. I think we made that pretty clear in the record.

Referring to Exhibits 96 and 105: On Exhibit 96 I show a scale headed "C. F. A. present rates." Taking, for example, 220 miles, I show the Royster scale. I think that is the rate we propose for Southeastern territory. The scale we are proposing is the Royster scale. For the same distance, C. F. A. scale is 4.20, as shown on the exhibit. On Exhibit 105 for 220 miles I show 3.60. That is considerably lower than the C. F. A. scale. These 9702 rates were prescribed since the advances, February 6, 1923. On this exhibit 105, for 80 miles, the Royster scale is 2.25 and the Southwestern scale 2.00. The 9702 scale- as I have indicated, were not prescribed as maximum reasonable rates. I do not think it is proper to take those rates to measure the standard of the rates in the Southern Ter- [fol. 371] ritory or in any other territory; any more than it would be proper to take the rates which the Commission prescribed in our I. & S. 1885, the brick scale, and reduce your rates in C. F. A. territory. (Tes. 288-291.)

Generally speaking, I would say that the Southern lines were entitled to publish a reasonable level of rates if that gives them higher than the Western lines. I have in mind decisions of the Commission in one or two cases, where they stated that the traffic density did not justify higher rates in the Southern Territory than in the Western Territory. The question as to whether this test that is to be made will include cottonseed meal and hulls will be settled at conference tomorrow.

I have made no study to compare the revenue per ton mile and per car mile on fertilizer under our proposed scale with the average revenue per ton mile or per car mile on other commodities on our lines. I wish that our traffic or accounting departments would make monthly reports showing the loading, tonnage, average haul, and average revenue upon these commodities; I would like to know that average haul on some of these commodities. Our line does not make that report.

"Q. About the Southwestern scale that you have shown here on one of these exhibits. A comparison of the commodity rates prescribed by the Commission in I. & S. Docket 1303 in the Mississippi Valley, with the level of rates prescribed on the same commodities by the Commission in Docket 9702, did the Southwestern case show

that the level of rates in the Mississippi Valley is approximately 80 per cent of the level of rates they prescribed West of the River?

"A. No, sir, I cannot subscribe to that, Mr. Martin."

There will be another witness to testify about the Valley. As to whether I think that the fertilizer rates in the Southeast and the Mississippi Valley might bear the same relation to the fertilizer scale west of the River that the Commission has found proper between I. & S. Docket 1303 and Docket 9702: Both cases were to remove certain inconsistencies, and to bring about an equalization of revenues [fol. 372] for the Mississippi Valley Lines, and for the Western lines, and I don't think they either one ought to be used for measuring the rates in the Southeastern Territory at all; either relationship or otherwise. In this Fourth Section revision that will be brought about later in the commodity rates, very substantial advances in the Mississippi Valley level of rates on all commodities generally would be brought about; I don't know whether it will or not. It should do it; those rates over there are ridiculous. This proposed fertilizer scale will bring about very substantial increases in the territory of the Valley too, but there is a very light tonnage over there. At least, I say yes, I have not checked in detail. I should say I don't know. We have got to put all these fertilizer rates on 4th section basis; I have made no detailed check of the Valley.

Under the statement, number of cars of fertilizer handled in Southern territory for 1923, Exhibit 42, that was actual weight as reported to the Commission. I expect that also includes where the loading is less than minimum.

Within the past 60 days the Southern Ry. reached its peak in its history on loaded cars, so we have had no empty cars lying around during that time. When I compared rates on fertilizer with rates on other commodities it was not with the thought that the rate on any other commodity should be the sole standard for measuring the rate, but they were compared for what they were worth. (Tes. 293-296.)

J. L. SHEPPARD was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination:

(Statement:) We are proceeding a little out of order just at this time, at the request of the Mississippi people, who ask that we put in such testimony as we had relating to the Mississippi adjustment and the Mississippi Valley adjustment.

My name is J. L. Sheppard. I am assistant general freight agent of the Illinois Central Railroad, the Yazoo & Mississippi Valley Railroad, with headquarters at Memphis, [fol. 373] Tennessee; have been connected with those roads for about 29 years, and during the last 12 years have been assistant general freight agent, with headquarters at Memphis, Tennessee.

I may say that all of my experience with the Illinois Central Railroad System lines has been on the lines South of the Ohio River. And, in my statement, I will say I am generally familiar with the adjustment of rates in the Southern section of the country, and particularly in that section of the country *by served* our lines.

In presentation of this case, the carriers arranged for certain representatives to deal with specific situations, not only to shorten the proceedings, but at the same time fully to acquaint the Commission with the adjustments and conditions existing throughout the territory. My testimony will relate to the adjustment in Mississippi, in which State our roads have considerable mileage.

It is not my purpose to duplicate the testimony of other witnesses who have shown or will show the locations of the various fertilizer factories in Mississippi, the production and consumption in that State as compared with other States, but I will deal directly and specifically with the rate situation in that State. However, as general information, and on a point on which I understand the Commission asks information in regard to consumption of fertilizer, I will say that in the Delta section of Mississippi, which, generally speaking, embraces that territory on and east of the Mississippi River, Memphis south to Vicksburg—I mean, north to A. & V. Railroad from Vicksburg to Jackson, and west of the main line of the

Illinois Central Railroad from Jackson, Mississippi, through Corinth to Memphis, Tennessee, the principal consumption of fertilizer is nitrate of soda. I will say that that is the section which produces almost exclusively cotton, and about the only fertilizer that they use in that territory is nitrate of soda in its original state. In the territory south of the A. & V. Railroad, which might properly be termed the hill section, and particularly along the line of the Y. & M. V. Railroad and the Illinois Central Railroad, more particularly the Illinois Central Railroad, there is production principally of vegetables, there being some [fol. 374] production of cotton and other agricultural products—the principal consumption in that territory is mixed fertilizers, as distinguished from the nitrate of soda. However, there is also consumed in that section of the State, as well as in the other hill sections of the State, which would embrace all of the State except that which I have described as the Delta section, the principal consumption would be mixed fertilizers, and following that would be acid phosphate, nitrate of soda, and what they term kainit. (Tes. 297-299.)

As to the consumption of fertilizer in the State as a whole, the best information I could get on that point was that fertilizer, 75 per cent of the fertilizers used in the State of Mississippi, consist of nitrate of soda and acid phosphate.

(Certain statements were thereupon received in evidence and marked "Respondents' Exhibits Nos. 135 to 142, inclusive, Witness Sheppard.") (Tes. 300.)

My first exhibit, No. 135, is a statement of the rates on fertilizer, carloads, between points in the State of Mississippi. The rates shown on the statement being the rates generally applied for single line movement throughout the State. There may be specific rates here and there to meet same peculiar or unusual situations, but the rates generally applied for single line movements between points in Mississippi are those shown on this exhibit.

In some instances the rates are published specifically, as fertilizer commodity rates on a mileage scale basis, and in other instances the rates are covered by exceptions to the classification. For example: On the I. C. Railroad and

the Y. & M. V. Railroad in Mississippi, we apply Class 0 mileage rate, which is an exception to the standard classification rating which is given to fertilizer under our exceptions in Mississippi to the Classification basis. Other lines, for example, the A. & V. Railway, have commodity rates and the description applied by them is indicated on the statement.

The statement shows whether the rates are class or commodity rates, and when I use the word class in this statement, I means exceptions to the standard classification basis. The statement is self-explanatory. A comparison of the [fol. 375] rates operated in Mississippi, with the rates operated generally in the Southern Territory will show that the rates in Mississippi are about the lowest, if not the lowest, applied in the entire Southern Territory.

The next statement, which I offer as Exhibit No. 136, shows the rates applied for a joint line movement on fertilizer between points in the State of Mississippi. I will explain in detail a little bit later on just how the rates in Mississippi for joint line movements are made, but now, in explanation of this exhibit, will say that the general basis in Mississippi for two-line commodity rates is to make a deduction from the scales of the single-line rates, under the through rates from the point of origin on one road to a point on the other, and is made by combining the net rate so obtained. The net rates, however, are published specifically, and it is not necessary to use a table in order to get the net rates to be applied for joint line movement. To illustrate, on a shipment coming from a point on the Y. & M. V. Railroad, destined to a point on the A. & V. Railway, that would be 10 miles from Jackson, the rate to Jackson on the Illinois Central Railroad would be 90 cents, and the rate for the 10-mile haul on the A. & V. Railway would be 90 cents, a total of $1.80 for the through movement, as can be seen from this Exhibit 136.

In an effort to locate the origin of the old rates in Mississippi, and when I say old rates, I mean these shown on the exhibit which I have just offered. (Tes. 300-302.)

I had our records examined for a number of years. However, the records have passed through one or two fires, and they have been moved from time to time, and are incomplete. There are shown on the statement which I now

offer as Exhibit 138, the rates in effect on the I. C. Railroad in Mississippi on June 26, 1897, and the changes which have been made to date. I have also shown on the same statement the rates in effect on the Y. & M. V. Railroad on August 10, 1901, to date, from which it will be observed that the only changes that have been made in the rates operated in Mississippi during the period of 25 years or more have been the general increases under General Order 28, Ex Parte 74, and Reductions of July 1, 1922.

While our records are not in such shape as to show [fol. 376] positively that the rates in Mississippi were originally fixed by the Mississippi Railroad Commission, I find statement by Mr. W. D. Hurlburt, one of our former assistant general freight agents, to the effect that on the Y. & M. V. Railroad prior to 1895, there was, in addition to the general distance tariff which applied for State and interstate application, separate distance tariffs on a variety of articles such as brick, cottonseed, fertilizer, coal and coke, lumber, logs and live stock, all of which he had covered in a proposed tariff by Classes K, L, M, N, O, P, R, S, T and W at substantially the same rates as those in effect, which it was found impracticable to advance or change in some instances on account of the rates having been fixed by the Mississippi Railroad Commission.

The Biennial Report of the Mississippi Railroad Commissioners for the two years ending June 30, 1891, appears to support Mr. Hurlburt's statement to the effect that the rates on fertilizer were originally fixed by the Mississippi Railroad Commission, because the following statement is made on page 5 of the report.

"Besides the revision of distance tariffs at different times during 1890 and 1891, we have established a great number of commodity tariffs, some of them being submitted to us by the railroad companies at our suggestion, and some without, but in all cases being a lower rate on the articles in question than fixed by the general tariff. The commodities referred to include cotton, hay, corn, wagons, furniture, canned goods, tomatoes, vegetables, chairs, spoke material, hickory timber, buggies, cottonseed meal, ice, firewood, domestic and factory goods, grain, brick, fertilizer, cottonseed, lathes, shingles, iron articles, bacon,

coal, etc. Some of these commodities are made to apply exclusively to native products such as hay, corn, cottonseed, etc., our object being to afford local rates to stimulate production." (Tes. 302-304.)

The records of the Mississippi Commission will show whether or not there was ever any order reducing the rates; that is their Biennial Report, as far as we could determine it.

Their files should show whether or not there was another, if they were kept at that time, but they included in their [fol. 377] Biennial Reports the changes that they had made, and in subsequent Biennial Reports, they set out specifically the rates they had established.

"Q. Some of the rates apparently are not reduced by order, but the inclination is that the carriers came in, and they talked with them, and the carriers agreed to reduce them without an order?

"A. That might have been equivalent to an order in those days, Mr. Commissioner. He says they were submitted by the railroad companies at the suggestion of the Commission. I may state, however, that my information is that quite generally in the earlier days the Commission did suggest to the carriers that there be reductions in rates, and those suggestions were followed, and not necessarily because the carriers recognized those as reasonable maximum rates that had been suggested, but, because it indicated the trend of the Commission's mind, and that they would probably enter an order upon a hearing in investigation. I will state, quite frequently the policy has been followed by the Mississippi Railroad Commission, as has been stated here, to make rates to stimulate production in the State of Mississippi, and that has happened in recent years, during my experience before the Mississippi Railroad Commission."

The statement made in the Mississippi Commissioners' Biennial Report ending June 30, 1891, to the effect that they established commodity rates on fertilizers supports the record made by Mr. Hurlburt that the original commodity rates were fixed by the Mississippi Commission and that later these commodity rates were converted into Class

O rates on our road; however, some of the roads still carry the rates as commodity rates.

On that point I wanted to make this statement, it is only in recent years that the Mississippi Commission has adopted the policy of making uniform rates on different roads in the State of Mississippi. In other words, in years gone by they did make different rates on different roads. For example, the Y. & M. V. road for years had different rates from points on the Illinois Central, and to some extent it has rates different today. However, in recent years [fol. 378] the Mississippi Commission has been making the rates on what it terms the standard railroads, the same on all lines of railroads. However, it will be seen that in quite a number of instances that the commodity rates on the other roads in the State of Mississippi are the same as the Class O rates on the Illinois Central Railroad. That will be observed from Exhibit 135. (Tes. 304-306.)

As to whether, in those cases where the Mississippi Commission has prescribed rates for the I. C. and the Y. & M. V. Railroad, different rates, the rates were prescribed for the Y. & M. V. invariably higher than those prescribed for the I. C. Railroad: I could not answer that they have not given us any differential rates on the Y. & M. V. in a good long while. You are getting back a little bit before my time.

With respect to the rates for joint hauls there is no question about their having been fixed by the Mississippi Railroad Commission. The basis having been reported in the Biennial Report of the Mississippi Commission for two years ending June 30, 1903. After the Commission had been given authority by law to fix these rates for joint haul movements, the basis prescribed by the Commission at that time being for distances 50 miles and less, 10 per cent reduction in local rates of each line.

Distance over 50 miles and under 150 miles, 15 per cent reduction.

For distance 150 miles and over, 20 per cent reduction.

Rates worked out on this basis have been continued in effect to date, subject, of course, to the general advances under General Order 28, Ex Parte 74, and Reductions of 1922, under Docket 13293. And the rates referred to are those covered by my Exhibit 136.

On the statement offered as Exhibit 137, I have shown in comparison the rates on fertilizer between points in Mississippi on the I. C. Railroad for distances 5 to 300 miles with the rates from Memphis, Tennessee, and New Orleans, Louisiana, to Mississippi destinations for substantially the same distance, from which it will be seen that the rates in Mississippi are much lower than the interstate rates from Memphis and New Orleans for substantially the same distance, or in other words, Mississippi has an adjustment which is considerably lower than the interstate adjustment. [fol. 379] I think that exhibit is self-explanatory, but in order to make it entirely clear, I will call attention to the rates for 100 miles. It will be observed that the Mississippi rate for 100 miles would be 7 cents per 100 pounds on the Illinois Central, while the rate from Memphis to Corinth, Mississippi, for 100 miles, is 12½ cents per 100 pounds, and from New Orleans to Magnolia, Mississippi, the distance being 99 miles, the rate is 12½ cents per 100 pounds.

By Com. Eastman:

"Q. It is a little bit confusing, after — had these rates stated in per net tons right up to this point, and you make it per 100 pounds.

"A. Well, it would simplify the matter, Mr. Commissioner, and I would be glad to withdraw that exhibit and express those rates in per ton, but I was using them just as they were published in the tariff. If it will simplify it, I will be very glad to do that.

"Q. I don't think it is important. It shows the relative level of the two.

"A. Yes, sir." (Tes. 206-308.)

In my Exhibit No. 139 I have shown typical illustrations at representative points in Mississippi where Mississippi fertilizer manufacturers have advantages over the interstate shippers to Memphis. The carriers have received some complaints from the interstate shippers at New Orleans, Mobile and Memphis, in regard to situation of the character illustrated by this exhibit.

In order that the exhibit may be clearly understood, will say that I have used actual fertilizer producing points, both State and interstate, which do business in the State of

Mississippi, and in order that the exhibit may be entirely clear, I call attention to the first illustration, which covers Chatawa, Mississippi. This point is on the I. C. Railroad, 91 miles south of Jackson, Mississippi, in the direction of New Orleans, to which the fertilizer manufacturers at Jackson enjoy a rate of 7 cents per 100 pounds. The distance from New Orleans over the I. C. Railroad to the same point is 93 miles, and the rate is 12½ cents per 100 pounds. Or in other words, Chatawa, Mississippi, is just halfway between—approximately halfway between Jackson, Mis[fol. 380] sippi, and New Orleans, and both points have about an equal haul over the same line of railroad, and it will be observed that there is a difference in favor of the Mississippi intrastate shipper at Jackson of 5½ cents per 100 pounds, or $1.10 per ton.

The other illustrations are prepared in exactly the same manner. For example, on the N. O. & N. E. we have used Meridian and New Orleans as representative shipping points to Hemlock, Mississippi, where the distance is the same. The same is true of other points shown on the exhibit and it can be seen that in all instances there is a difference in favor of the intrastate shipper. These illustrations are typical of others which exist in the adjustment as it stands today.

Mississippi is in the Mississippi Valley Territory, which embraces that section of the country on and south of the Ohio River, Paducah to Cairo; on and east of the Mississippi River, Cairo to New Orleans; on and north of the Gulf of Mexico, New Orleans to Mobile, on and west of the main line of the M. & O., Mobile to Jackson, Tennessee; thence via I. C. Railroad to Milan; L. & N. to Paris and N. C. & St. L. to Paducah.

The rates in the territory mentioned have, in many instances, been lower than existed throughout the South, due to water competitive conditions existing in that territory. It is not my purpose to go into detail in regard to this matter except to make the statement that the conditions controlling and compelling the low level of rates in Mississippi Valley Territory and particularly Mississippi River points, such as Memphis, Vicksburg, Natchez and New Orleans, in Fourth Section Violations in the Southeast, 30 I. C. C. 153, and the Commission by Fourth Sec-

tion Order 3866, issued in that proceeding, gave the carriers relief from the application of the Fourth Section. (Tes. 308-310.)

In a subsequent investigation, however, covered by Docket 9702, known as the Memphis Southwestern Investigation, the Commission issued Fourth Section Order 7542 on December 2, 1919, in which it denied the carriers Fourth Section Relief, it being stated in the report that the conditions no longer warranted the continuance of the Fourth Section relief previously granted. The interstate rates on [fol. 381] fertilizer to points in Mississippi were revised to conform to the provisions of the Fourth Section. When I say that I mean they were revised from Memphis, New Orleans, Ohio River Crossings and related points. They have not been revised, as I recall it, from the Southeastern Territory to the Mississippi Valley Territory as yet, and there is some movement of fertilizer from that territory. And those rates do not as yet conform to the provisions of the Fourth Section. First the class rates were revised, and later the commodity rates were revised. The revised commodity rates suggested by the carriers were published to take effect March 1, 1921, but they were suspended by the Commission in I. & S. 1303.

For many years the rates from St. Louis and Louisville to points in the Mississippi Valley Territory had been grouped, and in the revision of the class rates this grouping was continued. In working out the revised commodity rates the carriers generally determined base rates in the following manner: By using St. Louis to representative points in the Southwest, and Louisville to representative points in the Southeast, and adopting as basing or key rates the lower of the rates to the territories mentioned. I will illustrate, we will take for example the rate from St. Louis to Little Rock, it would be a distance of approximately 349 miles, and take the rate from Louisville to Birmingham, where the distance was 393 miles, and we would adopt either the lower of those two rates, or rates approximating the lower of those two rates, as the rate from St. Louis-Louisville group to Memphis, the distance from Louisville being via the short line 380 miles—that is, Louisville & Nashville—and the distance from St. Louis being 305 miles, via the Frisco.

After determining the base rate in this manner they then ascertained the relationship of the proposed base commodity rates to the first class rate to the base point and the same percentage relationship was applied throughout the Mississippi Valley territory (Tes. 310-312.)

Now dealing specifically with fertilizer, the carriers proposed from St. Louis-Louisville group to Memphis a rate of 23 cents per 100 pounds, which was made by ascertaining the percentage relationship of the commodity rate from [fol. 382] Louisville to Birmingham with the first class rate and the same percentage relationship was applied to the first class rate to Memphis, which resulted in rate of 25 cents per 100 pounds. That is, by taking rates to representative points in the Southwest, and the representative points in the Southeast and determine the basis. Determining the base rates. On fertilizer we took the rate from Louisville to Birmingham as the base, that being the lower of the two, and we found out what percentages the Louisville to Birmingham commodity rate bore to the first class rate from Louisville to Birmingham, and we made the commodity rate to Memphis by the use of that percentage, which resulted in a rate of 23 cents per 100 pounds from Louisville, Kentucky—St. Louis group, to Memphis, Tennessee. In other words, the rate was not only lower than from St. Louis to a point in the Southwest, but it was relatively lower than the rate from Louisville to Birmingham.

Having determined the percentage relationship to first class to the base point, Memphis, in this manner the carriers then applied the same percentage relationship to other destinations which included the Mississippi points, and from other points in the Mississippi Valley Territory; and also they are origin points. In this manner we obtain uniform gradation and relation of rates on classes and commodities.

The rates proposed by the carriers were suspended by the Interstate Commerce Commission in I. & S. 1303, and in its decision 64 I. C. C. 306, the Commission indicated that if the carriers bases were followed, the revenue of the Mississippi Valley Lines would be increased, and they state in the Fourth Section revision the carriers should go no farther than to revise their rates to conform to the Fourth

Section, and at the same time yield approximately the same revenue, or in other words, the depressed adjustment should be contained in revised form. For the purpose of meeting this condition the Commission required the carriers to establish from St. Louis-Louisville group to New Orleans a rate of 29 cents per 100 pounds, and they stated that the plan of relating the rate to the first class rate as proposed by the carriers, should be observed for the purpose of gradation and relation. That rate on basis the carriers propose from St. Louis to New Orleans would have been 32 cents [fol. 383] per 100 pounds. That 29 cents per 100 pounds is on fertilizer. Now, the 29 cents on fertilizer from St. Louis-Louisville group to New Orleans was 3 cents per 100 pounds lower than had been suggested by the carriers, on the basis that we outlined, that is, taking the Louisville to Birmingham rate as the base. Or in other words, the carriers suggested St. Louis-Louisville group to New Orleans, a rate of 32 cents per 100 pounds. (Tes. 312-314.)

In fixing the rates in the Mississippi Valley Territory the Commission did not prescribe the rates on fertilizer or the other commodities as reasonable maximum rates, and in their original report, in the original proceeding, as well as in numerous subsequent investigations, they have said that the rates prescribed in the Mississippi Valley were not fixed as reasonable maximum rates. On the statement which I offer as Exhibit 140, I have shown some extracts from the Commission's decisions in several cases to this effect. None of these decisions, however, relate specifically to fertilizer, but they relate generally to the Mississippi Valley adjustment, and particularly to the adjustment referred to in the proceedings covered by the dockets mentioned in the exhibit.

The question naturally arises what if any action has been taken by the railroad operating in Mississippi looking toward harmonizing that State and interstate adjustment, and in this connection there is now pending before the Interstate Commerce Commission Docket 9332, of the Memphis Freight Bureau, in which it is specifically alleged that Mississippi shippers are unduly preferred and that the adjustment from Memphis, etc., is discriminatory.

This case was heard about in 1916.

In conference held in Jackson, Mississippi, on January 3, 1923, which conference was arranged by the Hon. E. L.

Lewis, the Commissioner of the Interstate Commerce Commission, and Director of Traffic M. V. Hardie, attended by the Mississippi Railroad Commissioners and numerous State and interstate shippers, it was suggested that the carriers and shippers undertake to harmonize the differences and establish an adjustment which would temporarily take care of the situation pending the decision of the Commission in Docket 13494.

[fol. 384] Fertilizer was not included in the complaint mentioned, but as there have been complaints from interstate shippers in regard to adjustment on this commodity, the suggestion was made by the carriers that a revision of the fertilizer rates be considered along with the other commodities that were mentioned. On June 29, 1923, the carriers submitted to Mr. James S. Davant, and to other interested shippers, also the Mississippi Railroad Commission, some tentative rates, including rates on fertilizer, carloads. The figures suggested by the carriers on fertilizer, according to my recollection, were predicated on the Third Royster Scale. That scale having been suggested at that time for application in the Southeast.

When the carriers' tentative figures were submitted to the shippers, it was understood that there would be further conferences as soon as the shippers were prepared to meet the carriers. However, they have never suggested a conference to dispose of the matter since that time, and we naturally assume they have not been able to get together. I will say that in addition to submitting the figures in connection with the rate statement, and the letter which accompanied the same to the shippers and the Mississippi Railroad Commission, we also sent to Mr. Lewis, and to the Director of Traffic, Mr. Hardie, copies with all suggestions that were made for the purpose of lining up the State and the interstate adjustments. (Tes. 314-316.)

As a matter of information, will state that the carriers cannot advance any rates in the State of Mississippi without permission from the Mississippi Commission. On Exhibit 141 is copy of the Order 4357 of the Mississippi Commission, advising the carriers to this effect, and notifying them that if this was disregarded they would be subject to fine.

The matter of revising the rates on fertilizer between points in Mississippi and in the Mississippi Valley Ter-

ritory, was discussed with interested shippers along our road at a conference held in Memphis on November 6th, 1924, which was attended not only by the manufacturers located at Memphis, New Orleans, and other interstate points. The conclusion reached at this conference was that uniformity in State and interstate rates was desirable, and that a mileage scale for uniform application [fol. 385] seemed to be the most practicable plan for readjustment of rates to bring about the needed uniformity. While there were differences of opinion as to the measure of the rates, it was the unanimous view of those present that no different scale basis should be applied on our roads and in our section than in other sections of the South.

Exhibit No. 142 contains some figures taken from the 14th Census of the United States, which are the 1920 figures. The Mississippi figures are compared with those of other Southern States. The statement shows area in square miles of the Southern States, total population, and population per square mile, and the value in dollars of the live stock, agriculture, all crops, value of manufactured articles and mineral value, and the totals of the value of live stock, agricultural crops, manufactured articles and mineral values. Of Mississippi, and other Southern States. The statistics and figures are indicative of the traffic resources of the several States, and is for the purpose of showing that, from a traffic standpoint, there are no conditions in Mississippi warranting the application of a lower level of rates than operated generally throughout the Southern States.

The situation with respect to the unsatisfactory adjustments, State versus interstate, appear to be similar to other sections of the South, insofar as Mississippi is concerned, and a revision is necessary.

The general level of rates which the carriers are suggesting in the South is being explained and justified by other witnesses who will fully cover this part of the case. I only wish to add that, as shown, there are no conditions which warrant a lower level of rates in Mississippi than in other Southern States and on interstate traffic. (Tes. 316-318.)

When I arrived a day or two ago, Mr. Menzies was explaining the basis that had been suggested by the carriers,

and I was in the rear of the room. I do not know whether I understood Mr. Menzies correctly or not, but something was said in response to a question by Mr. Cotterill about the classification of these various articles. And I understood Mr. Menzies to say, whether I am correct or not, that the Committee having in charge that matter, considered [fol. 386] the specific articles and determined the classifications, and that the suggestions followed the conclusions of the Committee. I attended several of the meetings myself, and the plan was, as I understood it, to adopt as the uniform list, the articles, or fertilizer in the Southern Territory, the basis formerly contained in the Southern Classification, which is now contained in the Exception Sheet. In other words, that was taken as the standard for uniform commodity lists in the Southern Territory, and each of the commodities was not analyzed. For example, cottonseed meal was specifically mentioned. Take from our territory, cottonseed meal moves on the fertilizer rates locally between points in the South to a great extent, and where cottonseed meal is now on the fertilizer basis, of course, the rates will be changed to the same extent as the fertilizer rates are changed, but to points where we have specific commodity rates, and I will say that includes the ports and to the Ohio River Crossings and points beyond, where rates are not made on the fertilizer basis, in some instances lower, and in some instances higher, and made to meet the conditions there, that the cottonseed meal moving largely for feeding purposes, and for export, it is not our purpose to revise the rates to the fertilizer basis, that is, those commodity rates on cottonseed meal, and I don't think Mr. Menzies intended that. In some instances they are higher and in some instances lower. In that connection we are proposing—that is, proposing to apply in the Mississippi Valley Territory the same basis as applied throughout the Southern Territory. We are proposing to continue the grouping of St. Louis and Louisville. That rate ought to be made by the Louisville distance. However, another witness will cover that situation. Mine was dealing solely with Mississippi. My recollection is that the Louisville distance to the Mississippi Valley would be the controlling distance.

"Q. Between the longer distance?

"A. Not necessarily, Mr. Commissioner; it is longer than St. Louis, but I do not know that it is longer than the average in the St. Louis-Louisville Group. However, as to the destinations in the Mississippi Valley Territory, the destination grouping will not be observed as heretofore.

[fol. 387] By Mr. Martin:

"Q. Will not be observed?

"A. Will not be observed as heretofore." (Tes. 318-320.)

Now, as to the import business, I did not understand, too, that the import was involved in this proceeding, however, there will necessarily be a revision in the import rates and, we subscribe to the principle from the rate-making the ports, the distance rate is to be the governing rate, and that from the other ports the scheme of equalization as has heretofore prevailed, will be continued, and as to the specific rates, they will have to be worked out on that basis after the determination of it—that is, the specific rates will have to be worked out on that basis, but the present relationship, insofar as practicable, is to be maintained between the ports for the purpose of equalization. Where the ports are equalized now, it is the plan to continue the equalization, and where they are not, we would not attempt to equalize them.

"Com. Eastman: Mr. Menzies shakes his head.

"The Witness: I don't know what Mr. Menzies has in mind, but what I have in mind at the present time, where we fix a rate—that the present plan is to fix a rate—at the present the plan is to fix a rate from the ratemaking port on that scale, which will be continued, that is, the short line mileage will undoubtedly fix the rate from the rate-making port, and from the other ports we would carry out the same scheme of equalization as we have carried heretofore.

By Mr. Cotterill:

"Q. You mean the same principle. You don't mean the same differences that are now in existence?

"A. I will tell you about the differences, Mr. Cotterill, that would be our determination in the working out of the rates, but the principle is to be followed; yes, sir." (Tes. 320-321.)

[fol. 388] Cross-examination.

By Mr. Moore:

"Q. Mr. Sheppard, you have referred to the fact that the Mississippi Railroad Commission has from time to time in the past, established its rates on certain commodities for the purpose of development of home-grown products. Are not those rates, in every instance, for application alike over all railroads?

"A. Well now, that is a pretty big question to answer, Mr. Moore. I will answer it this way. Generally, that is true, where you have made your rates on native-grown products, you make them the same over all railroads; yes, sir."

I cannot bring to mind a single exception to that rule just now. It is only recently that the Mississippi Railroad Commission have allowed anything to the weak lines.

"Q. I say, if they do make any difference at all in the rates as between those for application to strong lines and those for application to weak lines, they would allow the weak lines the higher, would they not?

"A. I desire you to answer that question yourself, Mr. Moore; I do not know the inside of their workings."

Lately where you have prescribed differential rates, you have prescribed higher rates for the weaker lines. On the Mobile & Ohio Railroad, you will notice by referring to Exhibit 135, that the rates, generally speaking, are the same as on the Illinois Central, and the M. & O. being the fertilizer commodity rates, and the I. C. being class O. The G. M. & N. Railroad is located between the M. & O. and I. C. Railroads—that is, its line lies between them, and quite generally they have adopted in many cases, where they were able, the rates of the lines that were already established, and I don't think, in 1895, or in those days when this scale was fixed by the Commission, there was any G. M. & N.; it was not built at that time. Now, you take

the N. O. & G. N.—I don't know whether you refer to that as a weak line or not, but their line lies immediately to the east of the line of the Illinois Central. They paralleled the line of the Illinois Central, and they adopted the same scale of rates as on the I. C., when their line was built. [fol. 389] They had to do that in order to serve that territory. Now, the Y. & M. V. Railroad, we have always had a way for an unusual adjustment of rates, and particularly on class rates, rates for our shorter distances on the Y. & M. V. Railway, were higher than the rates on the I. C., but for the longer distance, due to the fact that the Y. & M. V. paralleled the Mississippi River, the rates for the longer distances on the Y. & M. V. regardless of the fact that it was a weaker line, were lower than on the I. C., and it is probable that the condition had some effect on the rates on fertilizer. But, as I say, I was not able to confirm from the record exactly how these rates were made, but everything goes to indicate that they were made originally as commodity rates by the Mississippi Commission, and were subsequently converted into Class O Rates by one of our assistant general freight agents in working up a uniform tariff. (Tes. 322-5.)

"Now, Mr. Sheppard, is it not a fact that away back beyond 1900, sometimes the Railroad Commission suggested to a railroad to revise its rates, and they prepared a tariff and brought it up there and it was approved. The Railroad Commission did not employ any rate men at all, did they, until about ten years ago, or eleven years ago?

"A. About ten years ago is when they employed a rate man. And, while I did not attend the meetings of the Commission at that time, I understood they would do that same thing. In other words, I have understood that the Commission asked the railroad people to make them a proposition on a rate, and they would put it in without a hearing."

The only minutes of the old Commission I have read are their Biennial reports. I read there where they referred to the fact that the I. C., Y. & M. V., or this, that or the other, had submitted their tariffs, and had been approved. I tried to be frank with the record. This report of 1891 said that the Commission had established the commodity rates, and

that some of them had been submitted to us by the railroad company at our suggestion. In other words, they suggested that it be done, and they did it.

On the Mississippi River the boats have always held, and today hold, on to the most desirable traffic. In other words, they held on to the grain, cotton, and freight of that kind. They did not bother much with lumber, coal, etc. The Y. & [fol. 390] M. V. Railroad is closer to the Mississippi River than the Illinois Central.

"Q. Now, then up to the time that the Mississippi Railroad Commission revised class rates—the rates on Classes C and D—and made them the same for the I. C. and the Y. & M. V., did not the Y. & M. V. have higher rates on classes C and D, and on grain and grain products, than the Illinois Central had, although it was between the Illinois Central and the River?

"A. I could not answer as to that. I have not made that comparison." (Tes. 325-327.)

My line has never filed with the Mississippi Commission any petition to advance the fertilizer rates in Mississippi, or any protest against the present rates, of any sort. On none of the other rates in Mississippi have we filed petition, except those where we issued them under protest. The underlying purpose of this revision, as I understand it, is to harmonize the rates throughout the Southern Territory. Undoubtedly the Royster scale would increase the rates in Mississippi; you have the lowest rates in Mississippi of any other State.

"Now, what is the Fourth Section revision that you spoke of there in the Mississippi Valley? Has your line prospered under those revisions, particularly since the 1303 Docket came down?

"A. Well, I don't know that we have prospered by those revisions, no."

I don't think we are making 5% per cent. We are paying dividends, but I don't think that is attributable to the Mississippi Valley revision. I don't know if this 4th section revision lost us any money.

"Q. Well, Mr. Sheppard, this grouping in Mississippi that is maintained there now, following 1303 adjustment, I understand it is your purpose to disregard that grouping in these fertilizer rates, and that this mileage scale will be applied uniformly, without regard to any grouping?

"A. That is what the carriers are suggesting, and is the only way they have been able to find where they could get [fol. 391] a uniform basis throughout the Southern Territory." (Tes. 327-329.)

By no means are the Mississippi rates higher than those of any other state in the Mississippi Valley. The fertilizer rates are lower.

"Q. Don't you know that the rates in Kentucky and Tennessee, Class O rates are no higher than the Mississippi rates on the Illinois Central?

"They are higher in Kentucky and Tennessee. I will say this, Mr. Orr, in answer to your question there, you probably have in mind mileage scale of rates, and the mileage scale of class O on the Illinois Central in Mississippi and interstate is the same. Formerly we had one tariff and that condition, as I recall it, continued until the Mississippi Commission fixed the joint line scales in Mississippi, and then we had two tariffs. But the Mississippi adjustment was the controlling adjustment, according to the record on fertilizer, and that is not only true of the fertilizer, but on our cottonseed. The cottonseed rates extend across the border."

I don't know that our tariff 131-D, general commodity tariff, names a lower scale of rates than those first columns here that I show. For 250 miles the tariff ought to name a rate of about 17¢ per 100# or $3.40 per ton for that distance. We are not proposing to except cottonseed meal from the fertilizer list. I said very specifically that where the fertilizer rates now apply on cottonseed meal, that we proposed to continue that basis. There are certain points to where it would not apply in Southern Territory. No change in those rate was contemplated. (Tes. 329-331.)

We did not propose to apply that change; none of the other carriers, I don't think, do. There is no consideration in this fertilizer revision to change the specific commodity rates on cottonseed meal.

Referring to Exhibit 135: I will look up those A. & V. rates for distances 5 to 75 miles and if they are wrong, I will be glad to correct it.

"Q. For your information, I will say that is a fact, that for 175 miles the rate is $1.75 a ton.

[fol. 392] "A. Will you give me the tariff that you have there on that?

"Q. It is the tariff you have there, only another section of it."

Concerning the purpose of Exhibit 137: I think you are right that the Mississippi intrastate rates are not covered in this proceeding, but strictly speaking and under the notice from the Commission, probably the Mississippi intrastate rates are not involved. However, under the advice from the Commission it was stated that information in regard to State and interstate shipments would be expected and should be given at this time, and as we had had some complaint from our interstate shippers we thought that it would be proper, in response to the notice from the Commission, to acquaint them with the situation in Mississippi, as well as the interstate adjustment. (Tes. 331-332.)

We cannot apply whatever rates may be prescribed here in Mississippi on intrastate traffic without the authority of the Mississippi Commission, but we do hope that out of this proceeding will come a uniform basis on State and interstate traffic into and out of the State of Mississippi and between points in the State of Mississippi. If that be necessary it is our purpose to go before the Mississippi Commission and ask their authority to publish intrastate whatever scale is prescribed here; we hope the Mississippi Commission will join with this Commission, and let us go ahead and fix it up, instead of waiting for a further investigation. We are going to give all of the facts we have got right here, and we hope to straighten it up here. I am sorry I cannot tell you what we are going to do for the future, I just don't know. (Tes. 333-334.)

There have been complaints by communities in other States against the intrastate rates in Mississippi. There has, so far, been no relief in the case of those complaints; I don't mean any more complaints, I mean complaints filed with the railroads. There was complaint in the case of Memphis, but they did not specifically mention fertilizer

—on other rates. The complaint has been partially satisfied by the State of Mississippi cancelling what they call the Mississippi Classification, and the establishment of class rates in Mississippi, but there was no relief given on the [fol. 393] commodity rates, and the relief given on the class rates and the classification was not, as I uderstand it, what the interstate shippers desired, because the Mississippi level of class rates is still below the level of the interstate class rates. There have been cases where communities in Mississippi have sought relief from the intrastate rates of adjoining States and have prosecuted their complaints before this Commission and have secured relief. One I recall particularly; the Meridian case was one; the Natchez case another, and the Corinth Grocery Co. case.

This Mississippi class rates are not on the same level that this Commission prescribed in the Corinth case; the Corinth case scale only went for about 50 miles. You gave the M. & O. R. R., as I recall it, the Corinth scale for 55 miles, and yet that was a gradation of the rates made by the Mississippi Commission.

On Exhibit 139 I make comparisons of rates from Meridian to Hemlock, Miss., on the Northeastern, and to Battles, Miss., on the M. & O. with rates from New Orleans and Mobile to the same points. They are carload rates. It would be possible to have a carload movement to either of those points. I don't know the population of Hemlock or Battles; I took them because they were representative points. We did have a specific complaint from New Orleans in regard to the rates from New Orleans to points on the N. O. & N. E. versus rates from Meridian points. (Tes. 334-7.)

They are representative of the points equi-distant between New Orleans and Meridian on the Line of the M. & O., the railroad that was specifically mentioned in the complaint that was lodged with the railroad. Mine did not mention any points, but referred specifically to the N. O. & N. E., that is typical of the situation. I did not pick them at random. The distance from New Orleans to Mobile is 202 miles, and in order to reflect the true situation on the N. O. & N. E., I tried to get a point halfway, that was 101 miles, and that was the point that was selected; that is the reason we hit Hemlock, Miss. I have the first time ever to hear a fertilizer factory say that there is not a possibility of a movement of fertilizer to points in Mississippi. In

other words, they claim they want rates to all points, that all farmers are likely to get a carload of fertilizer, and that the rates should be equalized. These are carload rates [fol. 394] used. The difference between you and I is just this: Population has nothing to — with fertilizer. They put fertilizer in the ground, you know. In other words, there are just as many farms around a small town as there is a large town. The farmer does not necessarily live in town; he lives out on the farm.

I said this about the general commodity adjustment into the Mississippi Valley: That the rates into the Mississippi Valley on classes and commodities had never been recognized either by the carriers or by the Commission as reasonable, maximum rates. The rate adjustment on grain and grain products is a part of the I. & S. commodity adjustment.

"Q. Is it not a fact that when the Southeastern carriers were denied Fourth Section relief on the route through the Southeast into Mississippi Valley, that the Mississippi Valley lines declined to increase the rates on grain into the Mississippi Valley, so as to kill the Fourth Section.

A. "I do not recall the Mississippi Valley lines declining to make the change you suggest. However, as the rates into the Mississippi Valley had been fixed by the Interstate Commerce Commission, in all probability we would not have changed those rates."

I don't know that we would not change them. The point as to increasing the rates on grain into the Mississippi Valley territory has never been considered by me. It was part of this adjustment. We have not proposed to revise any of the commodity rates into the Mississippi Valley Territory on any of the commodities fixed by the Commission in I. & S. 1303 except that there was some suggestions for revising some of the commodity rates for the purpose of eliminating Fourth Section departures in the Southeast on iron, and a few other articles, and those articles were revised about July 1st, 1923, and in all probability, there will have to be other revisions in those cases, but, having regard to the Mississippi Valley lines declining to revise the grain rates, I don't recall that at all. The grain rates in the Valley have been before the Commission several times since they were fixed in I. & S. 1303, notably in

the Montgomery grain case, the Nashville traffic bureau case, and the Birmingham Chamber of Commerce case. In [fol. 395] all of those cases the Commission said that the grain rates in the Mississippi Valley were made to meet the peculiar situation in that territory, and were not regarded as reasonable, maximum rates. Some of those have been formal expressions, and some of them are the expressions of the Examiners, not yet approved by the Commission. (Tes. 337-341.)

"Q. I stated when the Southeastern lines were denied Fourth Section relief from the rates to the territory southeast from the Ohio River and Mississippi River Crossings, from the Valley, into the State of Mississippi.

"A. I do not know that they asked us at that time to increase our rates to the Mississippi Valley. However, the rate structure on grain is interwoven in the Mississippi Valley with the Western adjustment, and I don't see how we could revise rates on grain into the Mississippi Valley, never having been a Southeastern line."

My recollection is they finally withdrew from the Valley. I don't know that they never would have taken that action if the Valley carriers thought they could justify higher level of rates from the Ohio River crossings by direct routes into Mississippi; there is a question there. (Tes. 341-343.)

J. L. Sheppard was thereupon recalled as a witness and, having been previously sworn, testified as follows:

By Mr. Gwathmey:

"Q. Mr. Sheppard, you were asked on yesterday about certain rates on fertilizer in Mississippi, that the Illinois Central Railroad is said to have proposed to the Mississippi Railroad Commission in past years; I want to ask you a few questions in that connection, if you please. The lines of the Illinois Central Railroad extend from Chicago south through Memphis and Cairo to New Orleans, do they not?

"A. That is correct, yes, sir."

The territory along that line in Mississippi is not productive of any very large amount of local traffic; our local

traffic produced along that line is very light. The principal [fol. 396] production along our road in Mississippi has been for years past and is now to a large extent lumber; that is being rapidly cut out along our railroad, and there is nothing to take its place except agricultural products, and the principal agricultural product of the State of Mississippi is cotton. Mississippi, I should say does not—well, along our railroad—Mississippi produces on an average of about one million bales of cotton a year, and the other agricultural products of volume are the fruit and vegetable traffic, and that is principally in the territory south of the Alabama & Vicksburg Railway on the line of the Illinois Central Railroad; I would say that would average something like I guess about 8,000 cars a year, six or eight thousand, I would say about five or six thousand along our railroad. The vegetable producing section, the principal vegetable producing section is about 23 miles or 25 miles south of Jackson, Miss., at a point called Crystal Springs; I believe that is the principal producing section, and the vegetables produced there in the largest quantity are tomatoes. Our other section is right around New Orleans; that is in Louisiana, however. Then there is really a third section in West Tennessee, that is much smaller, however, than the other two.

Crystal Springs is about 160 miles north of New Orleans.

The Illinois Central Railroad does have a large volume of through business moving through Mississippi, such, for example, as our grain business for export and things of that sort; we handle a large *a large* tonnage of export and import traffic through the state of Mississippi; and in addition to that, we handle a good deal of our southwestern business through the state of Mississippi in both directions. In former years, it — true that there was a considerable tonnage of lumber originating along the lines of the Illinois Central Railroad in Mississippi; the principal production of yellow pine lumber in the state of Mississippi was at one time on the Illinois Central Railroad south of Jackson, between Jackson and New Orleans; we had at that time, oh, a number of large mills, all of which have cut out and left that territory now, with the exception of about two or three, there is one at Fernwood still, and one at Norfield, and one at Hammond, is about all the large mills that are located on our line, all of the balance of the mills have cut

[fol. 397] out their timber, and the production along our railroad is very light at the present time; that is, in the pine territory. (Tes. 344-346.)

With the cutting away of the timber along the lines of the railroad, concerning the general policy of the Illinois Central Railroad with respect to efforts to develop agricultural production in the cut-over timber lands: The Illinois Central Railroad has for a long time had the feeling that this lumber tonnage, and has not only had the feeling, but it has seen the lumber tonnage rapidly going away from it; that is, the forests were being depleted, and every effort has been directed by our company towards encouraging the growth of agricultural products along our railroad; we have maintained a department for that purpose, to assist the farmers and instruct them in what they can do with the land, and in addition to that we have in numerous cases made rates for the purpose of encouraging and in the development of the agricultural prospects along our railroad; that is particularly true in the Mississippi Territory, which we feel like is necessary to have something to take the place of this forest product tonnage which can only last a few years longer. For instance, with respect to our rates that were established on the vegetables out of that section, they were referred to by the Commission in I. & S. No. 820 as missionary rates; and I might say that in that I. & S. 820, I participated, and made a very thorough investigation of the old bases, which showed very clearly that we had made them as missionary rates, and that we had consistently maintained the low level of rates from that territory, with the idea of encouraging the movement of agricultural products from that territory and the development of that particular industry.

"Mr. M. C. Moore: May I ask what rates are those you refer to?

"Mr. Gwathmey: The rates that were before the Interstate Commerce Commission in the proceedings known as I. & S. 820; I expect you recall that case.

"Mr. Sheppard: Mr. Moore participated in it; it was the vegetable case that was heard in New Orleans and St. Louis.

"Mr. Moore: Oh, yes." (Tes. 346-349.)

[fol. 398] The Illinois Central Railroad, pursuing that same policy, has in the past hauled considerable quantities

of stable manure, for instance, out of New Orleans to Mississippi at very low rates; we maintained for years from Louisiana points into Mississippi very low rates on manure to be used for agricultural purposes, while they were not restricted that way, that was the purpose of them; my recollection is we had an old per car rate in there; those rates have been revised somewhat in recent years, but they are still on a very low basis.

As whether we have gone so far as to buy some blooded cattle, bulls, and things of that sort, and turn them loose down in that country: I don't know exactly just what the plan was, but we did have some bulls that we put into that section down in that territory, and that was with the idea of developing the live stock industry; we also had some prizes in the way of boars and things of that kind, to encourage the growth of hogs.

In the Delta section, lying north of the Alabama & Vicksburg Railroad, the principal fertilizer used by the farmers is nitrate of soda; that is practically all they use.

My information is that nitrate of soda is a very expensive article, that it is not only a fertilizer, but that it is used for many other purposes; for example, on our own railroad, we have rates into the North that are much higher than fertilizer, and we feel like that basis is entirely proper on nitrate of soda; it goes up there for the manufacture of powder and articles of that kind. This nitrate of soda in the Delta section is used exclusively in the growth of cotton. I have no information as to the approximate amount that the farmer uses per acre; I have heard it said that it required about 100 or 150 pounds to the acre, but I don't know that sufficiently to testify to it here.

It is my information that nitrate of soda ordinarily sells around fifty or sixty dollars a ton.

If the cotton farmer in Mississippi uses 100 pounds of nitrate of soda per acre, and if the freight rate on that nitrate of soda from New Orleans or wherever it comes from should be say $3.00 per ton, that freight rate in the cost of the nitrate of soda used by the farmer on an acre would amount to 15 cents.

[fol. 399] As to how I figure that: $3.00 a ton, as I understood you to say; and 100 pounds to the acre, I divided the $3.00 by 20, and got 15 cents as the cost of it. The total

freight charge on that fertilizer would be the equivalent of 15 cents per acre.

"Yes sir. Mr. Gwathmey, in the start of your questions, or statements, you said something about our proposing some rates to the Mississippi Railroad Commission on fertilizer.

"Q. I said it had been suggested by Mr. Moore on yesterday that you had proposed rates in the past on fertilizer, that was my understanding of the trend of your testimony; I may be wrong.

"A. No, I wanted to correct that statement. The only rates we even suggested in Mississippi were the rates growing out of the conference with Commissioner Lewis at Jackson, Miss., in 1923. I did say that the old records show that our fertilizer rates in Mississippi were fixed by the Mississippi Railroad Commission, and that an examination of the Commission's report was not clear as to whether the rates had been suggested by the railroad or fixed by the Commission, the report said that in some instances the rates had been fixed by the Commission, and in other instances were fixed by the carriers at the suggestion of the Commission, and I didn't want to leave the impression that we fixed those old rates." (Tes. 348-351.)

The Illinois Central Railroad has in the past possibly made low rates on animal manure out of New Orleans into the farming sections called missionary rates—some of them.

Concerning any other instances where any of the lines in the Illinois Central System have made low rates on fertilizers or fertilizer materials of that character: I think some of the other roads in that section I believe—I am not right sure about that, but I think the Louisville & Nashville Railroad had some special rates out on their road on manure.

I don't recall any on any other kind of fertilizer on the Illinois Central just at this time.

I don't know that so far as manure was concerned, the road was convinced that rates of that character—low missionary rates, would be of substantial help to the farmer, [fol. 400] but it was represented to the roads that that would encourage the development of agriculture along our road, and the rates were established with that end in view. The rates were established voluntarily, and while I am not in

a position to say definitely that that controlled; I would imagine it would be more or less of an experimental nature; in other words, frequently it is represented to us that certain things would happen if certain things are done by our road, and we establish the rates more in an experimental nature, rather than with the idea that we are being convinced that such things will happen.

What we did in that case, we published specific rates on just animal manure, which were on a lower basis than the normal fertilizer rates.

I am not sufficiently familiar with the values of manure as compared with other fertilizers, to be able to answer the question as to whether there is anything in the nature of animal manure, or in the nature of its application to the land or its use in connection with the producing of the crop, which would make a relatively low rate on animal manure of more importance to the farmer than a relatively low rate on other kinds of fertilizer. There is this point in that connection I will say that there is a large supply of animal manure at New Orleans, and they have had in times past, I don't know whether that is true now or not, difficulty in disposing of it, and the manure could be obtained almost for the cost of loading the material.

"Q. Well, translating the freight rate into dollars and cents per acre, would a reduction in the freight rate in the case of animal manure be of more consequence in terms of cost per acre to the farmer than a reduction in the rates on other kinds of fertilizer?

"A. Well, you mean taking into consideration only the freight rates?

"Q. Yes.

"A. Well, I don't know about that; it would depend altogether on what the reduction was; of course, an equal reduction in the freight rate on the two characters of fertilizers would of course reflect the same per acre cost on both.

[fol. 401] "Q. But you did establish a low rate, what you considered a low rate on animal manure for the purpose of giving some help to the farmers along your line?

"A. That is my recollection of the basis, Mr. Commissioner."

If I understood the Commissioner's point right, it was this, that if there were a reduction made in the rates on fertilizer, and a reduction made in the rates on manure, what would be the difference, that is as reflected per acre in the cost of fertilizing an acre of land; of course, as I saw that, if the reduction was exactly the same, so far as the freight cost would be concerned, it would be bound to be exactly the same freight cost to the farmer; in other words, I mean this, if you reduce the rate on fertilizer 20 cents a ton, and you reduce the rate on manure 20 cents a ton, and it required exactly the same amount of fertilizer as of manure, why of course the freight cost of the fertilization would be exactly the same; but I am not sufficiently familiar with the amount of fertilizer to be used per acre or the amount of manure to be used per acre, to tell you whether it would be exactly the same or not.

By Commissioner Eastman:

"Q. I will tell you precisely what I had in mind in that question; exhibits have been introduced, the purport of which is to show that any reduction in freight rates on fertilizer would be of such slight effect, translated into dollars and cents, as to be inconsequential so far as the farmer is concerned; now, it seemed to me that your statement that you reduced the rates on animal manure for the benefit of the farmer was to a certain extent inconsistent with that position in regard to the inconsequentiality of such reductions.

"A. Well, as to just what the consequences would be to the farmer, I don't know, but it had been represented to us that if the rates on manure were reduced, it would be of help to the farmer."

[fol. 402] I am not sufficiently familiar to answer that if the farmer in the use of fertilizer were to use enough stable manure per acre to get the same plant food value that he would out of commercial fertilizer, he would have to use about twenty or twenty-five times as much stable manure as he would commercial fertilizer to get the same result on an acre of land. (Tes. 351-355.)

I would imagine, however, that with the very low value of manure, that it is a fertilizer from which you would

not get a result as favorable as you would from an article that would sell for from thirty to forty or fifty dollars a ton, that looks to me like a correct conclusion, but I don't know that, because I don't know the food value, the plant food value of stable manure and acid phosphate and those other things.

Mississippi is still capable of a great deal of development in agriculture and horticulture, and we hope it will have that development. The Illinois Central Railroad maintains a department for the purpose of encouraging those things along its line. That is true not only the larger, but the smaller lines in all sections.

The carriers have recognized not only the soundness but the necessity of the policy of doing all they can reasonably to encourage the development of agriculture. I would say that it has been represented to us that the use of fertilizer in Mississippi would encourage the development of the agriculture in that state. An adjustment of railroad rates so as to encourage that would be carrying out a policy on which the carriers have been engaged to some extent; we have to some extent been making rates in that way.

"Q. In other words, the carriers by their own policies heretofore, have really indicated that purpose and intention, and the Smith-Hoch Resolution was a sound proposition economically?

"A. No, sir, I don't think so; in fact, I don't know, I say I don't think so, I would like to qualify that by saying that I don't know much yet about the Hoch-Smith resolution.

[fol. 403] I have read it but still I have not been able to grasp it as yet but I will say this in response to your question on that point, that about developing and making rates to develop the growth of agricultural products, there are varying opinions as to what is necessary, and you have got to take into consideration the varying levels in the uses of fertilizer, and you take the state of Mississippi, which consumes approximately 200,000 tons of fertilizer a year, and it doesn't seem to me that there should be any lower level of rates in that state to encourage the use of fertilizer than there would in the other Southern states,

where there is probably a like need for development, and where under the existing rates, which are in many cases much higher than Mississippi, there is a much larger consumption of fertilizer; for example, in the Carolina territory, I have been told that the consumption is around a million tons a year.

"Q. I did not have in mind, Mr. Sheppard, the difference in the level of the intrastate and interstate rates; my question was based on the whole proposition at large; I did not have in mind even the difference between the interstate and intrastate rates.

"A. I thought you had in mind something about what the level of the rates should be." (Tes. 356-358.)

By Mr. Quirk:

"Q. Mr. Sheppard, isn't the sum and substance of your testimony that, after all, you believe that there should be a local or special treatment of the rate situation dealing with commodities such as fertilizer?

"A. Well, there have been in the past, Mr. Quirk, and there may be to an extent yet, but the conditions in the South are now such as that I feel that it is difficult to segregate any particular section and say that that section should be accorded any special treatment in the way of fertilizer or other rates; in other words, the conditions generally throughout the South are about the same."

I don't know whether North Carolina is the leading fertilizer state of the country, but my recollection of some figures that I saw recently, I don't know whether they were [fol. 404] accurate or not, was that North Carolina consumed over one million tons of fertilizer, and that is I would say a pretty good consumption.

I am not sufficiently familiar with the use of fertilizer, but I would naturally conclude that it would take a great deal more manure than it would of nitrate of soda to get the same results. The movement of stable manure as compared with the movement of fertilizer is practically negligible; in other words, the movement of manure is very small. It was then we made those rates; always has been and is still very small. (Tes. 358-360.)

"Mr. White: I would like to ask one or two more questions. Mr. McGehee has brought out a comparison of the use of fertilizer in North Carolina and that in Mississippi; now, are you familiar with the conditions in North Carolina so as to be able to determine the difference in the two states?

"Mr. Sheppard: You mean as to the consumption of fertilizer?

"Q. No, generally, what are the conditions that might affect it?

"A. No, he asked me about the consumption in the two states, as I understood it."

I don't know how much more money North Carolina expends on education per year than Mississippi; but Mississippi has a pretty good record for education. I do not know how much more money North Carolina has invested in good roads than Mississippi. I don't think those other general expenses would have to be taken into consideration in connection with the difference in the use of fertilizers; in other words, as I understand it, the consumption of fertilizer is in the agricultural pursuits, and probably Mississippi, if it has got as much land probably as North Carolina, or put in square mile area here, North Carolina has a square mile area of 48,740 miles, and Mississippi 46,362.

"Q. Mississippi has a much higher percentage of negro population than North Carolina, hasn't it?

"A. Well, the negro is used largely in the agricultural development."

[fol. 405] The negro as a rule does not determine how much fertilizer you will put on the land.

Referring to my comparison of the consumption of fertilizer in Mississippi with that consumed in North Carolina, and whether I know how the value of the agricultural crops per acre of the two states compare: I haven't got the value per acre; my Exhibit No. 142 shows the value of agricultural products in Mississippi according to the census report for 1920, was $336,207,156.00; and North Carolina was $503,229,313.00. I do not know how the cultivated acreage compares.

Referring to my answers to the questions of Mr. Gwathmey about the production of tonnage in Mississippi, and

my statement of the decreasing movement of forest products, and the fact that we have been hearing for a good many years about that fast approaching exhaustion of the timber supply, I know that the tonnage of forest products moved by the Illinois Central Railroad from Mississippi during 1924 compared with twenty years prior to that date would be less; a good deal less, that is originating on our road. I haven't the figures in my mind, but I do know this, as I stated in reply to Mr. Gwathmey's question, we had any number of mills, I can't give you the number of them, between Jackson, Miss., and New Orleans on our road twenty years ago and prior thereto, and now we have only three large mills as I recall it. (Tes. 360-363.)

Practically all of the large mills are out of business. I would not say that there is a great deal of timber produced all over that state, some of it is lumber, and some of it is in the form of logs and other forest products, that are shipped now from little stations that didn't use to ship, and a great deal more of it is hardwood than used to be the case the hardwood section on our road, the principal hardwood section, is in the Delta section, and the lumber traffic in that territory is being rapidly cut out, too; it has been cut out very rapidly in the last few years. However, we find this, that when the price of lumber goes up, that very often they bring in logs from stations, they find them out and find it profitable to cut the trees and bring them in; but the tonnage that we haul is decreasing, that [fol. 406] is locally from points on the Illinois Central Railroad, now, our big lumber tonnage today comes from points on our connections.

I would say that from Jackson, Miss., proper, while there is some lumber tonnage manufactured from logs brought into that point, that the larger part of the tonnage at Jackson I would think would be the pine lumber that is drawn in and dressed and reshipped, that would be my estimate, I don't know. I do know that there are some hardwood logs brought into Jackson, and in fact they are not only manufactured into lumber, but they have a stave mill there, and I don't know whether you manufacture boxes or not, I believe you do, I am not sure, but there is some of that tonnage.

"Q. Yes, sir. Now, then, about the vegetables; isn't it true, Mr. Sheppard, that there are vegetables produced

all the way from immediately south of Jackson, and even some north of Jackson, to the Louisiana-Mississippi state line, and also a considerable production on the Y. & M. V. Railroad; isn't Centerville, Miss., the center of that territory?

"A. Well, I will say this, Mr. Moore, that Crystal Springs, which is 23 miles south of Jackson, and Hazelhurst, Miss., 34 miles south of Jackson, that with the exception of those two points in the state of Mississippi, there is very little production of vegetables, there is some." (Tes. 363-365.)

There is considerable production at Gallman, Brookhaven, and Blackcoal, but nothing to compare with Crystal Springs.

"Q. Crystal Springs and Hazlehurst are the two large shipping points in that section?

"A. Centerville and Utica, on the Y. & M. V., and one other point that I don't recall, Fayette, I think that is the point, they ship fairly good quantities of vegetables, but when you pass those points, the movement is small."

There is developing a considerable development of the vegetable industry in and around Jackson; I haven't the [fol. 407] figures that were shipped from there last year, but when you get north of Jackson, on the Illinois Central Railroad, you have got practically no vegetables at all in the State of Mississippi, and on the Y. & M. V. you haven't got any; in other words, there might be a few cars from up there around—what is that point—Gluckstadt or Madison, as I say, but it is of little importance, after you get north of Jackson, you haven't got any vegetables on the Illinois Central, I would like to see some along there, we are doing everything we can to encourage the development, but they are just not there.

Mississippi does not by any means produce all of the grain and hay and other feed stuffs that it consumes; we bring in the other stuff that they consume from other states; we get that tonnage.

As to whether it pays us just as well to haul the traffic of the same character in one direction as the other, at the same rates: I would answer that question in this way, if the rates are the same in both directions, of course our

revenue would be the same, but nevertheless we would be benefited very greatly by a greater development of agricultural products in the State of Mississippi.

I do not know how the gross earnings of the Illinois Central Railroad per mile within the state of Mississippi for the year 1923, which are the last figures available, compared with the average earnings of the Illinois Central Railroad south of the Ohio River; I haven't seen the Mississippi figures segregated from the system as a whole. Probably my company reports them to the Mississippi Railroad Commission, but I haven't seen them.

"Q. You don't know, then, that they are greater, your earnings per mile in Mississippi are greater than the average for the system?

"A. Certainly not for traffic originated in the state of Mississippi.

"Q. Well, that may be true, but if they haul it into Mississippi, it is just about as profitable as if they haul it out?

"A. I will go further with my answer, and say that on triffic originated or delivered within the state of Mississippi, it would not be." (Tes. 365-368.)

[fol. 408] I don't know that in every state, in figuring on traffic density and earnings etc., it is customary to take into consideration the trans-state traffic as well as the inter and intrastate traffic.

"Q. Mr. Sheppard, referring to the question of Mr. Gwathmey about fertilizer rates, he referred to a rate of $3.00 per ton on nitrate of soda to the Delta points, have you any such rate as that from New Orleans; I assume he was referring to the rates from New Orleans?

"Mr. Gwathmey: I just used that as illustrative, I had no particular rate in mind.

"Q. And you drew the conclusion that it would be 15 cents per acre cost to the farmer.

"Mr. Gwathmey: If I had taken $1.50, it would have been half that much; I simply used that figure as illustrative.

"Mr. Sheppard: I think they get up into the Delta section with nitrate of soda for probably—they couldn't get

there for $3.00 a ton, but they could get there for $3.50 or $4.00 a ton."

My recollection is that our rate to Jackson, Miss., on imported fertilizer from New Orleans probably it would figure around $3.29; if I had my papers here, I could probably give you that positively.

"Q. Mr. Sheppard, referring again to that matter of tonnage produced in Mississippi and brought into and consumed in Mississippi, you referred awhile ago to the consumption of fertilizer in Mississippi of probably 200,000 tons; do you know whether or not the figures for last year, 1924, were something over 316,000 tons of mixed fertilizer, and that that does not include the cottonseed products which are used very largely for fertilizer? Cottonseed meal is a complete fertilizer, is it not, and used as such?

"A. Well, answering the first part of that question, I haven't seen the figures for 1924; it is my recollection that those figures that I was talking about, 200,000 tons, were for 1923. Now, with respect to the cottonseed meal being a complete fertilizer, it is I have been told a fertilizer, and it is also a feed, and quite generally it is shipped as a feed, [fol. 409] that is it is used for feeding purposes."

I don't know that it can be used as a feed, just straight, without being mixed with other ingredients; I am not sufficiently familiar with that to know, but it is a feed. My recollection is that years ago we used it as a feed, I don't know how they are using it now, they fed the cows with cottonseed meal. As I say, I haven't had any experience in recent years, but I have fed some cottonseed meal to cows, that has been quite a while ago, though. (Tes. 368-370.)

Mississippi's cotton production for 1923-24 was about eleven hundred and some odd thousand bales; that would produce 550,000 of cottonseed, two-thirds of the tonnage being cottonseed; my recollection is that that is about the ratio. The cottonseed meal and hulls would be about something like 80 per cent of the tonnage of the cottonseed, so that there would be about four hundred and forty or fifty thousand pounds of cottonseed meal and hulls. That tonnage is all reshipped or shipped from the points of pro-

duction; it is shipped to the oil mill points, and then the product shipped out from the oil mill points.

As to whether a good deal of that goes north over our road, out of the state: In the cotton case, you will recall, I think it was the position of the Mississippi Commission, and it is undoubtedly correct, that a good deal of cotton and cottonseed was hauled into the points, we were talking particularly of cotton at that time, I mean hauled in by wagon, and did not pay a freight charge. But it is true that there is a considerable volume of the cottonseed moved in by rail. Now, as to the consumption of the cottonseed meal produced in the state of Mississippi, a large part of that meal goes to the territory north of the Ohio River and to the Eastern Trunk Line Territory, where it is used for feeding purposes. Normally a good deal of that cottonseed meal goes for export; in other words, a very small part of it I would say would be consumed within the state of Mississippi or in the Southern Territory. We haul the cottonseed in some instances to the mill, in some instances it is hauled by wagon to the mill; of course, the product that is shipped out, we handle that product from the mill, [fol. 410] some of it is moved out locally and consumed locally. That is Mississippi tonnage, though, both movements. As to whether that tonnage probably accounts for the fact that our earnings there are so heavy: I want to be entirely frank; I think Mississippi adds to the earning power of the Illinois Central Railroad, but on that point we must not overlook the fact that the producing power of the state of Mississippi is small as compared with the other states. I want to give Mississippi all the credit she is due, understand, I don't want to detract from it in any way, we think it is a great state, and we want to see it developed. I haven't any exact figures on the local production in any state; you can only go by this, you are speaking there of cottonseed meal, which would be a manufactured product, but you take my Exhibit No. 142, and you compare your manufacturing value in the state of Mississippi with the manufacturing value in the other southern states, and you can't help but see the marked difference between Mississippi and the other southern states, which indicates that the production of manufactured articles in the state of Mississippi is very much less than in the other Southern states. (Tes. 370-373.)

"Q. Well, of course, Mississippi is more of an agricultural state than many other southern states.

"A. Well, take it now on the ground of agriculture, the exhibit also shows that, and you compare your agricultural products in the state of Mississippi, your value of them, with the value in the other southern states, and while the difference is not as marked, Mississippi is also very much lower than the other Southeastern states.

"Q. But what I had in mind was the figures that would reflect the actual tonnage produced in Mississippi and the other states.

"A. Well, this would reflect it, it doesn't reflect it in tons, it reflects it in dollars; in other words, I would say that your value of your cotton in Mississippi is probably higher than in a good many of these southern states, that would make that agricultural value more than their agricultural value of cotton; in other words, you have the longer staple cotton in the Delta section, which is more valuable than the shorter staple that comes from other sections of the state."

They produce long staple cotton in other states, but I [fol. 411] think Mississippi has the advantage in the production of the long staple cotton.

As to how our rates on fertilizer in Mississippi compare with the fertilizer rates we maintain on the remainder of our line in the south: I tried to make that point clear yesterday; taking our mileage scale rates, we formerly had one mileage scale, that applied both state and interstate, and our mileage interstate rates, which move practically no fertilizer, are the same as or about the same as the Mississippi state rates, in fact they were the same, the Mississippi Commission having fixed the state rates, and as I explained, the record showed that years ago they revised those rates, and made one scale and put them all in Class C; the Class C basis applies on the interstate scale and on the intrastate scale, but those rates, the interstate mileage rates moved practically no fertilizer. Now, as to the intrastate rates that do move the fertilizer, the rates in Mississippi are very much lower than the interstate rates. (Tes. 373-375.)

I said that from the best information we could obtain the Mississippi Railroad Commission fixed our rates on fertilizer in Mississippi; the records indicated that.

I said this, I want to be entirely fair about it, that I searched the record to find out where we got the rate, and I found this old record made by Mr. Hurlbut, where he said he had taken some rates that had been fixed by the Mississippi Railroad Commission, and that he converted them into Class O rates, he enumerated a lot of commodities, and said how he got them, but he wasn't very clear, there was no record or reference to any order of the Commission, or date, or anything of that kind that I could put my hands on, so then I went to searching the reports of the Mississippi Railroad Commission to find out what I could about that and prior to that date, where the record had been made by Mr. Hurlbut, and I found in the Commission's reports where they said they had fixed them, or else that at their suggestion the railroad company had fixed them, which was one and the same thing.

"Q. Yes, well, if the Commission did or had fixed [illegible] rates, Mr. Sheppard, and Mr. Hurlbut and your company spread those rates all over the Southern System, the latest have thought they were about proper.

[fol. 412] "A. No, I don't think so, Mr. Moore, for years we have tried to maintain one scale state and interstate, and we still try to do that on our railroad." (Tes. 375-377.)

I couldn't find that those rates were in force and being applied prior to the date of the report that I am talking about; my chronological history, as long as I could trace them back in chronological order, ran back to 1897 on one road, and 1901 on the other road, I couldn't find the rates back of that time. Now, if the records of the Mississippi Railroad Commission show that that is not true, of course I would like for it to be shown in this case, because I don't want to leave the Commission under any erroneous impression; we were called upon to come here and show what we could about the adjustment of rates on fertilizer, and I was giving all the information I have been able to develop.

"Commissioner Eastman: Mr. Moore, the facts that you ask about with respect to the amount of improved farm land in the various states, and the value of farm crops per acre, is given on Exhibit No. 10. And by the way, Mr. Sheppard, that exhibit is taken from the 1920 Census,

just as your Exhibit No. 142 is, and the value of the farm crops is given and is shown in the case of Mississippi as being $193,000,000.00 odd in 1923 and $172,000,000.00 odd in 1920. Now, you show $336,000,000.00 for agriculture, all crops; is there a difference between the designation 'Agriculture all crops,' and 'farm crops'?

"Mr. Sheppard: There must be, Mr. Commissioner, from these figures that you have read; my recollection is that these were prescribed just as I have described them in the Census report, as 'agriculture all crops'; now, just what it embraced is not stated, it did not embrace livestock.

By Mr. Moore:

"Q. It did not embrace livestock?

"A. No, livestock is separate and shows $134,000,000.00.

"Commissioner Eastman: There must be some discrepancy there, I don't know how it is caused. Are there any further questions for Mr. Sheppard?" (Tec. 377-378.)

"Commissioner Eastman: The intrastate rates in Mississippi are not in issue in the sense that we could make [fol. 413] any order with respect to them in this case, but we stated in the notice with respect to this proceeding, following the precedent set in the class rate case, where the intrastate rates were also not in issue, as follows: 'While other intrastate rates have not been brought in issue, the desirability of fixing interstate rates which can fairly and appropriately be used as a basis for achieving harmony between the interstate and intrastate rates will be kept constantly in mind.' With that end in view, that is with the end of fixing interstate rates which can fairly and appropriately be used as a basis for bringing about harmony between the two classes of rates, testimony relating to the intrastate adjustments will be freely admitted.

"Mr. Heyward: That was my understanding, Mr. Commissioner, but some question had arisen among our Mississippi shippers as to the propriety of an order from the Commission on this record; I did not understand that the Commission could or would enter an order affecting the Mississippi intrastate rates on this record.

"Commissioner Eastman: No sir, the issues are not so drawn that we could make any order on this record." (Tes. 379.)

R. A. CHADWICK was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination:

I am connected with the Traffic Department of the Mobile & Ohio Railroad as commerce agent. I have been connected with various southern lines in traffic capacities for about thirty years.

As to the feature of this rate situation it is my purpose to deal in my testimony: With rates from the Ohio River Crossings, St. Louis, Memphis, Nashville and south ports, to points in the Mississippi Valley Territory. In order to shew how the present low rates on fertilizer from Ohio and Mississippi River Crossings, Memphis, Nashville, St. Louis and related points, and from Gulf Ports to points in the Mississippi Valley were brought about, I want to give a brief history of these rates.

[fol. 414] Prior to the Commission's decision in the investigation known as "Fourth Section Violations in the Southeast," 30 I. C. C. 153, decided April 13th, 1914, there were numerous fourth section departures in connection with the class and commodity rates from Ohio and Mississippi River Crossings, Nashville, St. Louis, and related points to points in the South, including the Mississippi Valley. The greatest departures in the Mississippi Valley were at Mobile, New Orleans, Natchez, Greenville, Memphis, and other points on the Gulf of Mexico and the Mississippi River, to which subnormal rates were made to meet water competition. There were also fourth section departures at Meridian, Jackson, Greenwood, and other interior points in Mississippi to which the rates had been depressed, not by direct water competition but by the effect of the low water competitive rates to nearby points. For example, the rates from Ohio River Crossings to Jackson, Miss., which is 44 miles east of Vicksburg, were depressed by the low water competitive rates to Vicksburg and the low Mississippi intrastate rates from Vicksburg to Jackson; and as it has

always been the policy of the M. & O. Railroad to maintain rates from Ohio River Crossings to Meridian not higher than to Jackson, the Jackson rates were extended to Meridian, 96 miles east of Jackson, while higher or normal rates were maintained at intermediate points.

In its decision in "Fourth Section Violations in the Southeast," the Commission granted the carriers authority to maintain lower rates from Ohio River Crossings and related points to Mobile, New Orleans, Memphis and other Gulf and River points than to intermediate points, on account of water competition but denied authority to maintain lower rates to Meridian and Jackson than to intermediate points, and at the same time held that the rates to the points intermediate to Meridian and Jackson were not unreasonable.

As a result of the Commission's order in that case the carriers made a comprehensive revision of their rates on classes and numerous commodities from Ohio River Crossings and related points to all points in the South, including the Mississippi Valley. This revision was accomplished by making both advances and reductions—advancing the rates [fol. 415] to the depressed points and reducing the intermediates. (Tes. 380-382.)

The revised class rates were made effective January 1st, 1916, and the commodity rates were revised thereafter, from time to time as the work of revision proceeded. Not all of the commodity rates were revised as the work had not been completed when the government took control of the railroads and this work was discontinued by order of the Director-General. Fertilizer was among the commodities that were not revised.

In 1919, during the period of Federal Control, separate complaints were filed by the Meridian Traffic Bureau of Meridian, Miss., and Hanna Distributing Company, of Jackson, Miss., in which it was alleged that the class and commodity rates from Ohio River Crossings, St. Louis, Chicago and related points to Meridian and Jackson were prejudicial to those points and preferential of New Orleans, Mobile, Vicksburg and Natchez, the rates to Meridian and Jackson being higher than to the other points named. At the hearing of these cases the Director General made no

defense to the charge of discrimination and confined his testimony to showing that the rates to Meridian and Jackson were not unreasonable. The Commission's report in these cases (which were disposed of by one report), is 57 I. C. C. 107, decided February 10th, 1920. In that report the Commission held that conditions did not warrant a continuance of Fourth Section relief at Mobile, New Orleans, Memphis and other Gulf and River points, but issued no order in connection therewith, stating that the revision that would be necessary to comply with its order in the Memphis-Southwestern Investigation (Docket 9702) would remove the cause of complaint in these cases.

As a result of these cases, the carriers in the Mississippi Valley territory made a complete revision of their class and commodity rates between Ohio and Mississippi River Crossings, St. Louis, Chicago and related points and points in the Mississippi Valley, both southbound and northbound. As a general basis for the revised commodity rates, the carriers first decided to make the rates from Louisville to Memphis the same as the existing rates from Louisville to Birmingham, but not higher than from St. Louis to Little Rock. Furthermore, in order to avoid Fourth Sec- [fol. 416] tion violations it was necessary to make the rates from St. Louis to Corinth, Miss., not higher than from St. Louis to Sheffield, Ala.; from St. Louis to Vicksburg not higher than from St. Louis to Monroe, La., and other points immediately west of Vicksburg; St. Louis to Natchez, Miss., not higher than from St. Louis to Vidalia, La.; from St. Louis to New Orleans not higher than from St. Louis to points immediately west of New Orleans. Having determined the key rate in this manner, rates to and from other points were made to bear the same relation to the key rate as existed in the First Class rates. However, after we decided upon the basis of making commodity rates from Louisville to Memphis the same as from Louisville to Birmingham, the First Class rate from Louisville to Memphis was changed from 144 cents to 136 cents and commodity rates originally determined upon were correspondingly reduced. At that time, the rate on fertilizer carloads, from Louisville to Birmingham was 475 cents per ton, which, under the basis I have outlined made the rate from Louisville to Memphis 23 cents per 100 pounds which was the

basis for the fertilizer rates proposed by carriers from Ohio River Crossings, St. Louis, Chicago and related points to all points in the Mississippi Valley. The rates so revised were published to become effective March 1st, 1921, but were suspended by I. & S. Docket 1303.

After an exhaustive hearing under that docket, the Commission prescribed specific rates on certain commodities and provided that the rates on commodities not specifically provided for should be 85 per cent of the suspended rates. This case is reported in 64 I. C. C. 306 Part 2. In its report the Commission fixed the rate on fertilizer, carloads, from St. Louis to New Orleans at 29 cents per 100 pounds instead of 32 cents proposed by carriers, and required that rates between other points be made to conform to the relationship used by the carriers in the suspended rates. Rates revised in accordance with this order were published effective April 1st, 1922 and are, with a few slight exceptions, in effect today except as reduced 10 per cent in 1922. (Tes. 382-385.)

That the Commission did not, in that case, fix these as reasonable rates is amply supported by the record in that and subsequent cases which need not be referred to here. [fol. 417] As I have shown, the fertilizer rates were not revised following the Commission's decision in "Fourth Section Violations in the Southeast" decided in 1914, and at the time of the Commission's decisions in the Memphis-Southwestern Investigation and the Meridian-Jackson cases those rates reflected the old basing point system of making rates that was condemned by the Commission in Fourth Section Violations in the Southeast.

(Certain statements were thereupon received in evidence, and marked "Carriers' Exhibits Nos. 143 to 148 inclusive, Witness Chadwick")

Exhibit No. 143 is a map on which I have outlined the Mississippi Valley Territory. The red line indicates the boundaries. As shown, the territory is the Ohio River from Paducah, Ky., to Cairo, thence down the Mississippi River to the Gulf, and north of the Gulf of Mexico and on and west of the Mobile & Ohio Railroad from Mobile through Meridian, Corinth and Jackson, to Humboldt, Tenn., thence via the Louisville & Nashville Railroad to Paris, Ky., and the Nashville, Chattanooga & St. Louis Railway to Paducah.

I think that line that I gave conforms to the definition that Mr. Gardner gave the other day. I should say that included in that territory are also Aberdeen, and Columbus, Miss., which are on branch lines extending east from points immediately north and south of West Point, Miss., and Pensacola, Fla.

Pensacola, Fla., while not in the Mississippi Valley Territory, is usually given the same rates as Mobile on traffic from St. Louis and Ohio River Crossings, with the exception of Cairo, from which point the rates are usually made the same as from Evansville.

Now, immediately east of the Mississippi Valley is the Southeastern Territory, the western portion of which is designated as the Montgomery Sub-territory, that is the territory immediately east of the Mobile & Ohio Railroad. (Tes. 385-387.)

I said that Evansville was grouped with Cairo to the Southeast; I stated that Pensacola took the same rates as Mobile from St. Louis and the Ohio River Crossings, except [fol. 418] that from Cairo to Pensacola the rates are usually made the same as from Evansville to Pensacola, and not lower than from Evansville to Mobile. To the Mississippi Valley, Evansville is grouped with Louisville, as a rule; it is not in this adjustment. In order to show the exact situation prior to the revision made in accordance with the Commission's order in the Memphis-Southwestern Investigation, the rates proposed by the carriers in that revision, the rates prescribed by the Commission in I. & S. Docket 1303, and the rates we are now proposing, I offer a series of exhibits which have been numbered from 144 to 148 inclusive. Before commenting on these exhibits, I want to explain the basis on which the proposed fertilizer rates were made. From Louisville, Ky., Evansville, Ind., Henderson and Owensboro, Ky., and Cairo, Ill., we applied the single or joint line scale for the short line distances, using whichever made lower, that is the single or joint line scale. I am now talking about the rates we are proposing in this proceeding. From Cincinnati, Ohio, Covington, Newport, Lexington and points grouped therewith, 55 cents per ton higher than from Louisville. From St. Louis and group, same as from Louisville. From Memphis and Nashville, we used the single

and joint line scale via the short route, whichever made lower. In arriving at those rates, we did not use the distances via the so-called relief lines, that is such as the Mississippi Central, which lines proposed to suggest something higher than the standard scale. There were a few exceptions to the mileage scale in our proposed revision, made necessary in order to avoid Fourth Section Violations, but in such instances the result was lower rates than the scale would make, and not higher; for example, the proposed rate from Cairo to New Albany, Miss., is $3.60, although the application of the Royster Scale would make $3.83. But as New Albany is intermediate to Tupelo via the Frisco through Memphis, the Tupelo rate could not be exceeded at New Albany, there are several instances of that kind, as will be seen from the exhibit, which shows the basis on which each rate was made. When we proposed rates in 9702, we grouped Evansville with Louisville except to the shorter distance points. We are breaking up that arrangement here.

[fol. 419] Exhibit No. 144 is a six page statement showing rates on fertilizer and fertilizer materials, carloads, from Cairo, Evansville and Louisville to the principal points in the Mississippi Valley Territory, prior to the revision under Docket No. 9702, the rates proposed by the carriers in that revision, which were suspended by I. & S. Docket 1303, the rates prescribed by the Commission in 1303, and the rates we are now proposing. These different periods are indicated by column numbers 1, 2, 3, and 4 on the left of the page. All of these rates have been brought down to date; that is, they reflect the 10 per cent reduction of 1922.

New Albany, Miss., on Page 2, the rate shown as proposed from Cairo to New Albany is $3.60; the scale for that distance would make $3.83, but New Albany is intermediate to Tupelo by the route of the Frisco from Memphis, we could not exceed the Tupelo rate at New Albany.

"Q. Well, according to this, the distance is shorter to New Albany than to Tupelo.

"A. One is a single line, and the other is a joint line haul."

This statement shows the routes, and whether single or joint line hauls were used, S represents single line, and J

joint line. It will be noted that the distance from Cairo to Tupelo, 222 miles, is via the single line, that is the Mobile & Ohio Railroad, while to New Albany, Miss., the distance is only 217 miles, but it is via a joint line, two lines. Now, referring to the statement I made that the rates to Meridian and Jackson, Miss., and certain other interior Mississippi points, that the rates to those points were below normal prior to the revision under Docket 9702, I want to call attention to the rates shown on this statement on Page 3 to Meridian, Miss. This shows that the rate on fertilizer from Louisville to Meridian prior to the revision under Docket 9702 was $4.50 per ton, while from Louisville to the less distant points shown immediately above there on that next page to Columbus, Aberdeen and West Point, they are $5.40 a ton, or 90 cents higher than the rates to Meridian and Jackson. On Page 2 are shown rates to Tupelo, New Albany and Holly Springs, $5.00 per ton, or 50 cents higher [fol. 420] than the rate to Meridian, although the distances to those points are from 125 to 150 miles less than to Meridian and are intermediate to Meridian on the direct routes. In the revision under Docket 9702, as shown in Column No. 2, it was proposed by the carriers to advance the rate from Louisville to Meridian and Jackson from $4.50 to $5.20 a ton, an advance of 70 cents per ton, and to reduce the rates to Columbus, Aberdeen, West Point and Winona from $5.40 to $5.00 a ton, a reduction of 40 cents per ton; and to Holly Springs, New Albany and Tupelo, we proposed to reduce the rates from $5.00 to $4.50, a reduction of 50 cents a ton, notwithstanding the finding of the Commission in Fourth Section Violations in the Southeast, that those rates were not unreasonable.

This statement also shows that, while we proposed an advance of 25 cents a ton from Louisville to Brookhaven, we proposed a reduction of 25 cents to Hattiesburg and Laurel. I am calling particular attention to this situation, because it indicates that prior to the revision under Docket 9702, the rates to the interior points of Meridian or Jackson were, as I have stated, on a subnormal basis. (Tes. 387-391.)

The rates we propose are increases in all cases over the present rates, from the Ohio River. They are higher than the present rates but an examination of this exhibit will show that the proposed rates are in many cases less than

we proposed in the revision under Docket 9702, which rates were suspended by the Commission.

Exhibit No. 145 is a six page statement similar to No. 144, but shows the rates from Cincinnati, Memphis, and Nashville. This exhibit shows that the rates we are now proposing from Cincinnati to all points shown on Page 1, with the exception of Memphis, which was a water depressed point, are lower than the rates in effect prior to the Memphis-Southwestern revision. It is true, however, that to points south of Memphis, the proposed rates are higher than we proposed at that time.

As to where we get the basis for our rates from Cincinnati—the 55 cents a ton over Louisville—that is the basis we applied in making rates from Cincinnati to points in Montgomery Sub-territory. On an average, the mileage basis would make about 55 cents difference, that was one [fol. 421] reason why we adopted that 55 cents, but there were other reasons, which will be explained by a witness who will explain the Southeastern adjustment. In the Valley, we simply used the same differential over Louisville as they applied to the Montgomery Territory. That will be more fully explained by a witness who will explain the Southeastern Adjustment; from the Ohio River to the Southeast.

Exhibit 146 is a five page statement showing the rates from the Gulf Ports to interior Mississippi Valley points. This shows that for distances under 150 miles, the proposed rates are lower than the present rates; for example, the proposed rate from New Orleans to Lumberton, Miss., is $2.37, while the present rate is $2.90. It is not necessary to call attention to the others, as the exhibit shows just what the comparison is.

I am speaking of Exhibit No. 146 now.

"Q. You show a present rate of $2.90 from New Orleans to Meridian, that is the wrong rate, I think that rate is $2.07 or $2.09.

"A. Well, I haven't the tariff before me.

"Q. In other words, instead of a reduction, there is an increase proposed of about 79 cents per ton.

"A. I don't know, Mr. Heyward; I will have to look into that."

Those rates shown under that Reference 3 take into consideration the 1922 reduction. All of these reflect the 10 per cent reduction. I did that to make the rates comparable. The basis for these rates is shown on Page 5, I don't think it is necessary to make any comment on them. (Tes. 391-394.)

The purpose of Exhibit No. 147 is to show that in this proposed revision, the advances that we are proposing to make from the Ohio River Crossings to the Mississippi Valley points may not be as great as to the local stations, as shown on my Exhibit to the common points. For example, as shown on this statement, the rate we are proposing from Cairo to Corinth, Miss., a common point, is $3.15, against the present rate of $2.70, or an increase of 45 cents a ton. To the first station on the Mobile & Ohio Railroad [fol. 422] south of Corinth, that is Nabors, Miss., the present rate is $2.90, and the proposed rate $3.27, or a difference of 37 cents. Now, the reason for that is this; in this revision we are now making or proposing, we will apply the mileage scale from the Ohio River Crossings to each destination, and break up this system of grouping that is in effect today; that is, at present we have six mileage groups in the Mississippi Valley, one termed the Memphis Group, covering the Southern Railway, Memphis division, from Memphis to Corinth; another group extending from Greenville, Miss., over to West Point, Miss.; a third from Vicksburg over to Meridian; then we have the Natchez group and the New Orleans group. In these rates, we are not observing that grouping at all, we are applying the scale to each point in the valley as far as it can be done without causing Fourth Section violations. Nabors was in the Tupelo group, just immediately south of Corinth. At present, all points on the Mobile & Ohio Railroad south of Corinth and north of Tupelo are in the Tupelo group; consequently, to Nabors it is in the Tupelo group—I will have to take that back, I will have to change that; it is not in the Tupelo group, but it is between Corinth and Tupelo; under this scale, the proposed difference in the rate to Nabors will be less than the difference between the present and proposed rate to Corinth. That is also true of these other local points shown on the exhibit. As a rule, the

rates to all points in a group are the same today, I don't know of any exceptions.

"Q. Well, I had understood that in groups which were fixed in the so-called Pitt readjustment, that those were the territorial groupings or groups of points and that some of the intermediate points were traded up between the groups.

"A. That is true, I think, in connection with the rates from Memphis and New Orleans, where the distances are short, we had to make some gradation, we couldn't carry the Greenville rate from Memphis to our points between Memphis and Greenville, but as a rule, after you get beyond the first group, then all points between the two groups take the same rate; I don't know of any exceptions to that. The purpose was to show that the increases shown [fol. 423] on my Exhibits are maximum increases that would result, and that the increases to the intermediate local stations would not be so great." (Tes. 394-396.)

Exhibit No. 148 compares the rates that we propose in this revision from St. Louis to Decatur, Birmingham and Montgomery, Ala., with the rates to opposite points in the Mississippi Valley Territory. The Louisville & Nashville Railroad and the Southern Railway, operating from St. Louis and Ohio River Crossings to Pensacola, Mobile and New Orleans, pass through Decatur, Birmingham and Montgomery; consequently, it would be impossible for the Louisville & Nashville Railroad to maintain a higher rate at any of the intermediate points in Southeastern Territory than to the Gulf Ports named. Now, this shows that in this revision, the carriers are proposing to reduce the rate from St. Louis to Decatur 28 cents, to Birmingham 33 cents, and to Montgomery 54 cents, and that notwithstanding these reductions, the rate we are proposing from St. Louis to Mobile, $6.53, is not high enough to clear St. Louis to Montgomery; in other words, if the Louisville & Nashville Railroad and Southern Railway are to continue to handle traffic to Mobile or Pensacola, it will be necessary for them to reduce the proposed rate to Montgomery still further, that is, make it $6.53, or go out of that traffic. The rates from St. Louis are the same as from Louisville at present

to the Mississippi Valley. That is the basis we are proposing to continue.

I called attention to Decatur, Birmingham and Montgomery—outside of the Mississippi Valley—in connection with the exhibit I filed as a map, the map I filed as an exhibit. We feel that whatever scale is reasonable for application in Southeastern Territory ought to be applied in the Mississippi Valley; I don't know of any transportation or other conditions why we should have lower rates in the Valley than in the Southeast. (Tes. 396-398.)

Gross-examination:

Referring to Exhibit 146: The rate shown opposite Column 3 from Gulfport to Meridian is the present rate. We are now applying a rate of $3.20 a ton; the tariff authority [fol. 424] is shown on page 5 of the Exhibit. These are supposed to be taken from the undated series of Speiden's tariffs from Gulf ports to the Interior Mississippi Valley points.

"Q. I think you will find that that rate is nearer $2.09 than $3.20.

"Mr. McGehee: We agreed to check that, Mr. Heyward, and put it in the record."

Ordinarily the practical route from Gulfport to Meridian would be an intrastate route. I'll check the exhibit and see if I have used the wrong rates on there and make whatever corrections necessary.

Referring to Exhibit 145, showing present and proposed rates from Memphis and the purpose with reference to the rates on cottonseed meal and hulls from Memphis to the Interior Mississippi Valley points: My understanding is that the cottonseed meal and hull rates are not affected by this revision at all as to the interior, on the fertilizer basis. So that if we have specific rates on cottonseed meal and hulls from Memphis or from any other market that handles those commodities, that are lower than our proposed fertilizer rates, it is my understanding they would be continued in effect.

I understand that the Commission in Docket 3866 denied 4th section relief at Meridian as against points intermediate to Meridian and Ohio River Crossings, and that they at the same time held that the rates to the intermediate points were not unreasonable. We had no orders from the Commission to remove that departure; the carriers were directed by the Commission to make this revision as promptly as they could, and they were engaged in that work when the government took over the control of the railroads, and under instructions from the Director General, all work of that kind was discontinued. I stated that we revised our class rates and a substantial number of commodity rates in accordance with the 4th section on January 1, 1916. (Tes. 398-401.)

I am offering no testimony seeking to show any differences as between the rates from the Mississippi Valley fertilizer manufacturing points into the Southeast, as compared with the rates from that territory into the Missis-
[fol. 425] sippi Valley; our proposition is to put all those rates on the lowest scale no matter whatever justification has been offered or the Royster scale will apply with equal force to these specific rates we are now publishing between southern points.

I understand that on the Gulf & Ship Island the rate on fertilizer today from Gulfport to Jackson is $3.20 a ton; if the rate is $1.69 a ton my statement, of course, is wrong. I can't answer for the G. & S. I., but it is the expectation of the carriers generally that whatever scale is prescribed by this Commission for interstate application will be submitted to the State Commissions for authority to apply the same scale in the different states. The distance from Gulfport to Jackson is 160 miles. From New Orleans to Jackson is 183 miles, and this statement shows that rate to be $3.20.

"Q. You have $3.20 against $1.69.
"A. I don't know anything about $1.69."

As to the policy of the carriers I represent with respect to the equalization of those two rates one against the other: On domestic traffic we propose to apply the scale without any equalization, one point against another, but on the im-

port traffic, we expect to put in rates which will equalize to a certain extent one port against the other, the details have not been worked out yet. I am not testifying directly for the G. & S. I. All of the carriers discussed these rates, and the G. & S. I. agreed to apply the mileage scale on their line, and have stated that they would make their rates from Gulfport on the Royster scale. Assuming that they get the Royster scale for the 160 mile haul from Gulfport to Jackson, as an example, the new rate for the 160 mile one-line haul would be $3.15. If that new rate will be $3.15 and your present rate would be $1.69, that is the increase between those two. (Tes. 401-405.)

(Witness agreed to check tariff for possible errors.) (Tes. 405-406.)

In working up this system of rates, we have confined our routes to routes via which shipments actually move or can move; we don't use combination on junction points where [fol. 426] there are no facilities for interchanging traffic; I believe that is the only exception that we make to the strict application of the mileage basis. I don't know if that is true as far as all the carriers are concerned.

This scale of rates that is proposed is not designed primarily for fertilizer as distinguished from fertilizer material; the investigation covers both. I don't know that it is intended to cover fertilizers any more than fertilizer material. Fertilizer is a much heavier moving commodity, the movement is more general. These rates I show in my exhibits apply to fertilizer and fertilizer materials—both. I can't say these rates were designed as a primary matter to move fertilizer any more than for fertilizer material. It is true that fertilizer moves shorter distances on the average than fertilizer material. I think it would be fair, with that in mind, to extend a scale that would move principally fertilizer to the movement of fertilizer material; I don't see any reason why it should not; if a scale is proper on fertilizer for 600 miles and on fertilizer material for 600 miles then the figures we have proposed for distances beyond that are also proper. Fertilizer does not move 600 miles, but that is a proper scale for that distance whether it moves or not. (Tes. 406-409.)

I couldn't say that there is any movement from Memphis to Hattiesburg, Miss. I don't suppose that there is any movement there. On the other hand there might be a movement of fertilizer material. If any fertilizer moved, that fact would affect it. I don't think that all tends to show that there is a real reason for the difference in the treatment.

"Q. I notice from Exhibit No. 146, you show to Hattiesburg from Gulfport a reduction from $2.50 to $2.14, for a short haul?

"A. All of these rates were arrived at by the use of the scale."

The rates I show from the Gulf ports are not to apply on import traffic; they are domestic rates. We haven't worked out the rates for import traffic, but our general plan is to apply the scale from the nearest port, and then range the rates from the other ports so as to effect some sort of equali-[fol. 427] zation. In the case of Mississippi with the nearest port Gulfport or Mobile, we would base our rates from those points on by the application of the scale from the nearest port, Gulfport or Mobile. With that scale, they do not include handling charges; to the scale we would apply from Gulfport or Mobile, we would have to add the handling charges at shipside. I think those handling charges at Mobile and Gulfport are 30 cents a ton; I am not sure.

"Mr. Heyward: It isn't 30 cents, it was 70 cents."

Whatever they are will be in addition to the rates. Generally, our present import rates from Gulfport and Mobile to points in Mississippi Valley territory include handling charges. I have made no effort to show these import rates here at all in any of my exhibits. Generally speaking, this revision we are proposing will mean a great many increases in all the rates to the Mississippi Valley, and very substantial increases over the rates that were prescribed by the Commission in 1303. In many cases, they are also increases over the rates that the railroads were proposing in 1303. Taking the carriers in the Mississippi Valley as a whole, I think they need additional revenue. The purpose of this revision is to have a reasonable and

uniform level throughout the South. It was not the object of the Mississippi Valley lines to gain additional revenue in proposing this scale; it will probably give us some additional revenue in the Valley, but if it is a reasonable scale, we don't think that that should stand in the way of our getting it. I can't tell you offhand how the traffic density in the Mississippi Valley compares with the traffic density in the Southeast; on the Illinois Central it probably is higher, and on some of the other railroads it is lower. I couldn't say what percent of the mileage in the state of Mississippi is represented by the line of the Illinois Central; I would guess about 40%. (Tes. 409-413.)

By Mr. Heyward:

"Q. Mr. Chadwick, isn't it a fact that you do absorb your handling charges at the ports on shipments that move on the domestic rates to the territory on and north of the Alabama & Vicksburg Railroad and west of the Northeastern?

[fol. 428] "A. I cannot say positively, Mr. Heyward; my recollection is that the rates from the ports to all points in the Mississippi Valley include the handling charges.

"Q. You are mistaken about that.

"A. I am?

"Q. Your terminal tariff provides that it does, that you shall absorb the handling charge on traffic that moves on domestic rates where there are no import rates published, and you do assess that charge at points where the terminal charges are assessed, where an import rate is published, it will result in Fourth Section departures will it not, by adding, in other words, by adding the handling charges to the import rate, you will produce a higher rate than results from the reduction of the handling charges from the domestic rate?

"A. There may be instances of that kind."

It is the present intention to add the handling charges on all import traffic under this proposed revision. I think that that will make very substantial increases in the rates to a great many points; to some points, as I pointed out, the proposed rates in the Mississippi Valley from the Gulf are reductions.

Assuming the present rates today from Gulfport are to Lanier, $1.10, to Hattiesburg, to Meridian $2.00, and to Jackson $1.69 and Columbia $1.24, the figures will show for themselves what the increase amounts to; it would be the difference between the rates you have now and the proposed rates under the Royster scale; I didn't follow your figures to see what percentage it was.

We need revenue; we think we ought to have a reasonable scale whether it increases our revenue or not. I don't know about the history of these rates; I think they were put in from time to time, one point at a time, under different circumstances that possibly controlled each different rate. There is competition between all of those ports; I imagine that had something to do with those rates. I couldn't tell the reason for any particular rate in the Valley offhand. Under this proposal those rates would be increased.

We are going to break up the so-called grouping in the Mississippi Valley but to a certain extent we propose to maintain the grouping at the Ohio River crossings. Lex- [fol. 429] ington, for instance, would be included with Cincinnati. I don't know any reason why Lexington or other inland Kentucky cities are not entitled to their mileage or natural location to points in the Mississippi Valley and the Southeast, except that we have maintained these groups for a long period of time, and it puts the shippers at those different points on an equality; I know of no other reason. We are breaking up the destination groups, not origin groups. We are breaking up the Evansville-Louisville origin group, but we have the same Cairo and the same St. Louis-Louisville groups, with Louisville taken out, and we will have the same Cincinnati group. I stated why Lexington should take the same rate as Cincinnati.

I have never heard of a movement of fertilizer or fertilizer material from Lexington into the Valley. From the Ohio River those rates are used as factors in making rates on traffic originating beyond to a very large extent; the only movement on fertilizer rates from or through Ohio River is fertilizer material originating at points where packing houses are located. We don't reach Lexington or Cincinnati with our line. My understanding is we now absorb handling charges to Valley points. (Tes. 413-418.)

N. V. HUTCHINSON was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination:

My name is N. V. Hutchinson, general freight agent of the Columbus & Greenville Railway Company, with headquarters at Winona, Miss. As the Columbus & Greenville Railway is not a rate making line, we will not undertake to justify the rates to our junction points, but will rely upon such testimony as the trunk lines have submitted as to the reasonableness of the rates, etc. We will, however, endeavor to justify our Fourth Section Relief with respect to meeting the Trunk Line rates at our junction points and maintaining higher rates at our intermediate local points.

By Fourth Section Order No. 7026, dated November 3rd, 1917, the Columbus & Greenville Railway was granted Fourth Section relief and permitted to continue and es- [fol. 430] tablish class and commodity rates from Baltimore, Md., and related points; Ohio and Mississippi River Crossings and related points; and South Atlantic and Gulf ports, and related points to and via its junctions with other lines, the same as the rates contemporaneously in effect on like traffic from the said points of origin to the said destinations via the lines of its competitors; also to maintain higher rates to its intermediate local points on basis of lowest combination, provided that the component rates applicable between points on the applicants line used in making such combinations should not be increased except as might thereafter be authorized by some order of the Commission. Fourth Section Relief was granted on account of the unfavorable financial condition of this carrier.

The Columbus & Greenville Railway is not a rate making line and consequently has no voice in establishing rates to its junction points and unless it is permitted to meet Trunk Line rates at its junction points, it will undoubtedly suffer loss of revenue which in its present financial condition will have the effect of jeopardizing its operation. Our freight trains are running light and it is very seldom that they have full tonnage; therefore, the additional cost of handling this business in addition to other tonnage would amount to practically nothing. The Columbus & Greenville Railway is peculiarly situated in this respect and

careful consideration should be given to this particular feature. On the other hand, having to meet this competition at its numerous junction points, this line should not be compelled to operate the lower junction point rates at its intermediate local stations where the same conditions are not encountered.

Due to the present financial condition of the Columbus & Greenville Railway, we respectfully urge that it be permitted to continue to meet the rates of its competitors or Trunk Line rates to and from its junction points, also that it be permitted to maintain higher rates at its intermediate local points on basis of lowest combination.

As the Columbus & Greenville Railway operates wholly within the state of Mississippi, thereby being strictly an intrastate carrier, we are agreeable to adopting no less than the proposed Trunk Line single scale for interstate application between points on the Columbus & Greenville Railway, provided said scale is prescribed by the Commis-
[fol. 431] sion, as it will at least practically maintain our present revenue.

We feel like that we are entitled to and should have a higher scale than the proposed Trunk Line scale, for application between points on our line, but due to the peculiar situation or location of our line with respect to keen competition there, with the large Trunk Lines which cross our line ten or eleven times, we don't feel that we can maintain and operate a higher scale than the proposed Trunk Line single scale. (Tes. 420-422.)

This road only within two years has emerged from receivership but it can hardly be doubted that if it is deprived of its present source of revenue it would revert to that condition very promptly.

In order to substantiate our grounds for the relief sought, I beg to submit my Exhibits Nos. 149 to 156 inclusive.

(The statements were thereupon received in evidence, and marked "Carriers' Exhibits Nos. 149 to 156 inclusive Witness Hutchinson.")

My exhibit No. 149 is a map on which the Columbus & Greenville Railway is indicated by the figure 13. From this

map it will be noted that the Columbus & Greenville Railway connects with the Southern Railway and Mobile & Ohio Railroad at Columbus, Miss.; with the Mobile & Ohio Railroad and Illinois Central Railroad at West Point; with the Gulf Mobile & Northern Railroad at Maben and Mathiston; with the Illinois Central at Winona; with the Yazoo & Mississippi Valley Railroad at Greenwood, Moorhead, Elizabeth, Stoneville, and Greenville. This clearly demonstrates the peculiar geographical location of the Columbus & Greenville Railway with respect to strong Trunk lines. The only difference in that respect from the Alabama & Vicksburg is that we have more junctions, we are crossed more times than the Alabama & Vicksburg is, they have about one or two, while we are crossed ten or eleven times.

My exhibit No. 150 is a statement showing that the total mileage of the Columbus & Greenville Railway is 169.59. This line extends east and west across the northern part of the state of Mississippi, Columbus, Miss., being its eastern terminal and Greenville, Miss., its western terminal. This portion of the state is pretty well served by larger and stronger lines.

[fol. 432] This exhibit also shows that the total number of stations on the Columbus & Greenville Railway is 53, 10 of which are common points, 10 local agency stations and 33 non-agency stations, or flag stops. The combined population of the 10 common points is 34,237; of the 10 local agency stations 6,922; and of the 33 non-agency stations 879, making a total population of all stations 42,038. This will indicate that the section traversed by this road is very sparsely settled.

This exhibit also shows that the average distance between the common points is 23.94 miles. The flow of the large volume of traffic to and from the section of the country traversed by the Columbus and Greenville Railway is north and south. I desire to call your special attention to the fact that this road is crossed at ten different points by strong Trunk Lines which operate north and south, and these Trunk Lines naturally handle a large portion of the through traffic via their junctions, leaving the Columbus & Greenville Railway dependent almost entirely upon its short haul or local traffic. While the average distance between the

common points is 23.94 miles, the average haul distance is approximately 10 miles. (Tes. 422-424.)

My Exhibit No. 151 is a statement showing the different classes and commodities handled by the Columbus & Greenville Railway during the year 1924. In the first column is shown the tonnage originating on the Columbus & Greenville Railway, and the second column shows the tonnage received from connecting lines. It will be noted of the total tonnage of 456,744 tons originating on the Columbus & Greenville Railway 12.6 per cent consisted of products of agriculture, 35.0 per cent products of mines, and 40.8 per cent of forest products. Of the total of 159,798 tons of products of mines, 159,535 tons, or 99.8 per cent consisted of gravel and sand, all of which moved to points in Mississippi for road building purposes on low intrastate rates.

Of the total of 57,358 tons of products of agriculture, 50,803 tons, or 88.5 percent consisted of cotton and cottonseed products (except oil). The tonnage of cottonseed oil was 3,161 tons. The products of cotton has been materially reduced in recent years due to the ravages of the boll weevil.

My Exhibit No. 152 is a statement showing the operating results of the years 1919-1924 and which is self-explanatory. [fol. 433] During 1922 the Railway Operating Income shows a net gain of $188,942.48. This gain was made possible by the fact that this property was operated by a Receiver who spent practically nothing for maintenance and who, because of the court's protection, was able to operate through the strike, thereby doing an abnormal business. During 1923 the net operating income was $533.16, and in 1924 $30,051.57. These amounts were earned by most rigid economy. As a matter of fact, it would not have earned these amuonts had not the Mississippi Tax Commission practically exempted it from taxes. All during 1923 and 1924 its earnings were not, and even at the present time, are not sufficient to maintain the property in such condition as it should be.

This road was once owned by the Southern; owned and operated at one time by the Mobile & Ohio, up to the time it went into the hands of a receiver.

"Q. This went through the reverse process of what is in the style now, instead of being consolidated with a strong line, it was controlled by it, and then split off?

"A. Well, at that time the idea was to junk the line altogether, and the receiver took hold of it down there, and after abandoning about 100 miles of it, he made a fairly good showing, and he has been making expenses ever since, barely getting by with it, and while it was the idea, I suppose, to abandon the line, it is very necessary that the road be continued for the reason that there are several inland towns there that are 10 miles from any other railroad, where there are oil mills, light plants, ice plants and various manufacturing plants there, and if the road was abandoned, they would suffer very materially, and there is no doubt but what the values of property would be decreased considerably, as well as the farm lands in that immediate vicinity." (Tes. 424-426.)

My Exhibit No. 153 is a statement showing a comparison of the present rates as prescribed under I. & S. Docket 1303 and proposed rates based on the Third Royster Scale from Cincinnati, Ohio, Cairo, Ill., and Memphis, Tenn., and New Orleans, La., to common and representative local stations on the Columbus & Greenville Railway, together with distances and routes.

[fol. 434] We are attempting to justify the rates to our common points (as this justification will be made by the Trunk Lines), but simply show the junction point rates in order to reflect the basis for rates to our local stations, viz.: lowest combination. While the proposed rates to local stations show increases, at the same time these rates were constructed on lowest combination using the proposed Royster Scale single line for an average distance of 10 miles beyond the junction which is practically the same as the factors applicable beyond the junction used in constructing our present rates. (Tes. 426-427.)

On that exhibit, A is the common points and B are our local stations; you will find the key to it on Sheet 3. Those rates to our local stations are now made arbitraries above junction point rates; they are made on the basis of lowest combination of locals; you see, our average line haul or rate making haul you might say, is the distance of 10 miles, and with the exception of one station on our line, we use 10 miles in making through rates, that is in figuring out the lowest combination from the junction. We are proposing

the lowest combination from the nearest junction which makes the lowest combination. The present and proposed rates to the local points are made on combination basis. As a matter of fact, if we could apply the straight mileage to our local points under the Royster Scale, I really couldn't say that those rates would be increased above what they are now.

"Q. You can tell it in this way, can't you; here is a local point, Uporia on the first page.

"A. Yes sir.

"Q. The rate to that is $5.92, the proposed rate to Mathiston, which I presume is the nearest junction point, is $6.18.

"A. From what point, Mr. Commissioner?

"Q. Cincinnati, the proposed rate from Cincinnati to Mathiston, a common point, is $6.18, which is higher than your present combination rate to the local point; that being the case, it would look as though you would gain an advantage over the present situation even if the straight mileage were applied without Fourth Section relief?

"A. No sir, I don't think so; you take our present rate there to Uporia of $5.92, which is made on combination, $1.02 over the Trunk Line scale, that is the present rate; [fol. 435] well now, you take the mileage for a distance of 582 miles, and you take the rate for a distance of 582 miles, as figured there, plus $1.02, will give you the $7.20, you see that is the way that is figured out." (Tes. 427-429.)

The proposed rate from Cincinnati to Mathiston is $6.18 and that is higher than the present rate to Uporia, which is $5.92.

"Q. Now, if the straight mileage were applied to Uporia, wouldn't the rate be $6.18 or higher?

"A. Well, whatever that 582 miles would make the proposed rate; no, I think it would be $6.18, it would be $6.18."

It would be higher than our present rate, but the basis we propose here doesn't reflect any increases in our factors to our local junctions, because this is the same thing that we have got in today, the same factors that we use today is what we are proposing, and the increases are brought about, I mean the increases reflected here to my local sta-

tions are brought about by the addition of the increases to the junction points. I don't know whether the Trunk Lines could afford to give us out of a joint rate of $6.18 as high a division as we now receive through our local rate. Of course, that increase is brought about there by application of that Royster Scale.

To Uporia division the rate is made on Mathiston, we get our local of $1.02, we deduct our arbitrary proportion. The Trunk Line gets $4.90 plus; it is according to where we get it, plus our percentage proportion of the through rate or the junction point rate.

"Q. Well, take from Cincinnati, you get how much out of that $5.92 rate?

"A. I don't recall now what our divisions are from Cincinnati; I say it is according to where it is delivered to us.

"Q. Well, you get $1.02 plus something, don't you?

"A. Yes sir, we get plus our percentage proportion of the through rate, the junction point rate, which makes it about two dollars, I think.

"Q. If the carriers can give you that out of the rate of $5.92, they could afford to give you the same thing out of the rate of $6.18, couldn't they?

[fol. 436] "A. Well, the way it figures out, they could, I suppose, I don't know whether they would do that or not, I don't know what they would do." (Tes. 429-431.)

My Exhibit No. 154 is a statement showing the present and proposed scale of rates for interstate application between points on the Columbus & Greenville Railway, which reflects increases and decreases. I call special attention to the fact that for a distance of 10 miles, the proposed rates are the same as the present rates, of course the increases are above that. That is the Royster Scale, what we propose is the Royster Scale, their single line, that is the one we are proposing for application between points on the C. & G.; we are really, being an intrastate carrier there, the only use we have for this scale is in making rates between our points. So far as our local rates are concerned, the state authorities have not let us charge about what we please; they have prescribed certain rates for application over our line, and in this adjustment they made down there

in July, 1922 I believe, they gave us a higher scale of class rates, that is the weak lines, and we were included in the weak lines, than they did the Trunk Lines. They did not prescribe these fertilizer rates; these fertilizer rates here are the interstate rates, these are interstate rates published in our C. & G. Freight Tariff No. 221. The Interstate Commerce Commission did not prescribe those for us; that is a different scale, that has been in there for years, I don't know how long.

"Q. And I suppose, as you are a weak line, you are trying to get all the money you can, and apparently until this Royster Scale was suggested by the Trunk Lines, you hadn't thought of increasing your fertilizer rates up to that basis, had you?

"A. Well, no, we had thought about it, and I had been trying to get the rates increased up there, I had been to Washington and talked to Mr. Pitt about those things, but he said that inasmuch as this 13494 revision is on, not to bother about it until that is finally adjusted."

My Exhibit No. 155 is a statement showing the average revenue per ton, per ton mile, per car mile, and per car of [fol. 437] the Columbus & Greenville Railway for the calendar year 1923, as compared with strong competing Trunk Lines shown thereon for the same period. This statement is self-explanatory.

My Exhibit No. 156 is a statement showing the freight proportion of operating expenses per ton, per ton mile, per car mile, and per car of the Columbus & Greenville Railway for the Calendar year 1923, as compared with strong competing Trunk Lines as shown thereon for the same period. This statement is also self-explanatory.

In view of the financial condition of this carrier, we earnestly urge that the relief sought be granted. (Tes. 431-33.)

(Statement by the Witness N. B. Hutchinson, continued:)

My Exhibit No. 155 is statement showing the average revenue per ton, per ton mile, per car mile, and per car for the Columbus & Greenville Railway for the calendar year 1923, compared with strong competing trunk lines shown

thereon, for the same period. This statement is self-explanatory.

My Exhibit 156 is statement showing freight portion of the operating expense per ton, per ton mile, per car mile, and per car, of the Columbus & Greenville Railway for the calendar year 1923, as compared with strong competing trunk lines, as shown thereon, for the same period. This statement is self-explanatory.

In view of the financial condition of this carrier, we earnestly urge that the relief sought be granted.

The Gulf, Mobile & Northern is not as strong as some others of them, I would not call it a strong competing line. It is one of our connections; I only showed the lines we connected with.

"Q. One of the lines that has sought the kind of relief that you are seeking?

"A. I do not know, Mr. Commissioner, whether we are going to ask for the same thing or not.

"Q. You have, in other cases?

"A. Well, I don't know whether they are on the lowest combination basis or not. They have asked, I understand, for some relief; I don't know what the base is." (Tes. 434-35.)

[fol. 438] In conjunction with my railroad business I also operate a farm down in Mississippi—a small place down there, I don't know whether you call it a farm or a garden. It is located in Sunflower County, Mississippi, near Indianola, Mississippi, in the section know- as the Delta section. The acreage of my farm is about 400 acres.

I would say that I represent the average small farmer in that section. The principal crop of my farm is cotton. The principal fertilizer that the farmers use in my section is in the Delta section, nitrate of soda.

To explain just how the farmers in my section use the nitrate of soda in connection with the growing of their cotton crops: Well, they first bed the ground up ready for planting of cotton, and then they take a cotton planter and put the nitrate of soda in that, and run that right ahead of the cotton planter. They put the nitrate of soda down, and cover it up with the dirt, and then right on top of it they

put the cottonseed in. They put the nitrate of soda in with the cotton pla-ter; that is the way the most of them do.

From 100 to 150 pounds of nitrate of soda is used per acre; I don't know how much nitrate of soda the average farmer in my community uses per year. I used one year about 5 tons.

"Q. Is that fairly representative of what you use from year to year?

"A. Well, if I was going to usc it it would be, I do not use it every year."

I am not using it this year. That nitrate of soda that is used in our section is shipped, principally from New Orleans. There are three or four ways by which they buy it. Some buy it through the county demonstrators of the counties in which they are located, and some buy it direct, and some from the furnishing merchants. The farmer who uses, as I say I do in certain years, about five tons of nitrate of soda on his farm—he would buy that from, ordinarily the merchant there.

"Q. Do the farmers in your section frequently buy this nitrate of soda on credit, or do they ordinarily pay cash?

"A. Some of them do; they are not ably to pay cash; get it on a credit." (Tes. 435-37.)

[fol. 439] The difference in the price that you have to pay when you buy on credit, and the price that you pay when you buy for cash is 25 to 33⅓ per cent higher. The credit price is about 25 to 33⅓ per cent higher than the cash price; down in my section, in the Delta section. The ordinary price of nitrate of soda in my section ranges from $50.00 to $60.00 a ton. Right now I think it is close around $60.00; I understand it is about $10.00 higher than it was in the early spring. I have not bought any of it this year at all.

I could not state whether the average farmer uses 5 tons. I do not know whether the average farmer uses that much nitrate of soda or not. That is used principally by the large planters down there, and they use it anywhere from 500 pounds on up. That is the way it ranges.

Assuming that the average farmer uses 100 to 500 pounds per acre of nitrate of soda—the freight rate on that will approximate about 20 to 25 cents an acre.

Based upon my observation and experience, a variation in freight rates, either up or down, had little effect upon the price paid by the farmers in the purchase of nitrate of soda—the farmer buying from the commission merchant.

If these farmers are paying from $50.00 to $60.00 a ton for nitrate of soda for use on their cotton crops, in my opinion a variation of a dollar or two in the freight rate would not influence those farmers in the amount of nitrate that they would use in a year on their crops.

As to why I did not use any nitrate this year: I will tell you, last year was a littler bit hard with me, and I did not have the money to buy the nitrate of soda, and another reason why—the principal reason is that I rent my land out to negroes, and they pay cash rent for the land, and they did not want to use it this year, so I did not force them to use it. (Tes. 437-440.)

"Q. Yes, now, may I ask you just one other question. The thought has been suggested that it is possible for fertilizer to be stored in the neighborhood of the place where it is to be used in advance of the time when the farmers are ready for it. Do the farmers in your section ordinarily buy their fertilizer when they want it; when they are ready to use it?

[fol. 440] "A. Yes, sir; just as soon—they do not buy it until they are ready to put it in the ground, as a rule."

It is a fact that the people in Mississippi claim that the land referred to, as well as the Delta land, is among the richest land in this country. It has been referred to as being that, but that is in the years past, when the Mississippi River used to overflow down there every year, and leave a rich deposit, but now it is getting like—more like the hill land, it is one-crop, growing cotton continually year after year, takes the necessary ingredients out of the land, and the nitrate of soda or some fertilizer has to be used. I do not maintain that land that only requires 150 pounds of nitrate of soda per acre, is as poor land as the average land in the South; I do not undertake to say it is the poorest land in the South. That is a mixture of soils; it is buckshot, sandy loam, what they term down there as white crawfish land, it is a general mixture. The soils runs very deep.

By Mr. Harrison:

"Q. The carriers are predicating their rates based on carload minimum of 20 tons. How does the farmer buy? Are not the carriers proposing to increase the minimum to 20 tons, and the farmer only buying 5 tons, how does he buy that way?

"A. He buys that from the commission merchant, who gets it in there in carloads and distributes it out to the smaller farmers."

I don't buy direct I buy through commission men.

In the use of fertilizers in the Delta it is largely dependent upon the sale price of the crop of the previous year, the more money they have, the more fertilizer they are going to buy, as well as anything else. That is really the regulating factor, rather than the question of rates, the amount of money they have to pay for it.

The Columbus & Greenville Railroad, or Railway, is the successor of the Southern Railway Company in Mississippi. My information is that my rails extend to the Mississippi line. I operate, though, only between Columbus and Greenville, Mississippi.

[fol. 441] "Q. Under what arrangement is it that you operate only to Columbus, if your company owns rails to the State line? Who made that arrangement?

"A. I am not familiar with that, Mr. Moore. I understand the Southern Railway operates under some transportation arrangement, I don't know what it is; I am not familiar with that end of it."

I do not know with whom or between whom that arrangement was made. I don't know if it would be a substantial advantage to me in the operation of that property, to operate to the State line, bringing the freight into Columbus and west of there, than to operate just eastward to Columbus; I have not given it any consideration, but offhand I would say no, because there is nothing between the State line and Columbus.

"Q. But would it not be some advantage to you in the interchange of freight with a connecting line down there,

to secure traffic that may be routed over another line, of the line operating into Columbus?

"A. Well, I could not state offhand, Mr. Moore, what advantage that would be to us.

"Q. The Columbus and Greenville Railway Company has no voice in determining whether you operate to the State line or to the City of Columbus?

"A. I could not answer that question. I am not on the board of executives, I don't know." (Tes. 440-444.)

L. L. DRESCHER was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination:

My name is L. L. Drescher; I live in Louisville, Kentucky, where I am employed by the Louisville & Nashville Railroad Company. I am at present assistant to the vice president of that Company. I have had a little more than 20 years' experience in the 20 years' service of the traffic department of the Louisville & Nashville Railroad, a greater part of that time has been spent upon rate adjustment questions, and interstate and intrastate litigation involving freight rates.

[fol. 442] The policy of the Louisville & Nashville Railroad in the past has been similar to the policy of other lines in respect of the disposition to maintain a low rate to move fertilizer, to encourage the production of agricultural products. In my testimony I will deal with the present interstate rates, and show what they are. I would say that the base of interstate rates maintained at the present time by the Louisville & Nashville Railroad Company reflects the policy of the Louisville & Nashville Railroad to encourage the production of agricultural products on its line. To the extent to which rates maintained by the Louisville & Nashville Railroad in Alabama on intrastate traffic are lower than the rates maintained by my company on interstate traffic, I would say that that indicates the extent to which the Alabama Commission has gone below what we felt was necessary for the purpose of encouraging the free use of

fertilizer on your line; it indicates the extent to which that Commission, and other Commissions which have prescribed lower rates, have substituted their judgment for the judgment of the management of the Louisville & Nashville Railroad. The carriers, in arranging for the presentation of these cases, assign various portions to the several lines.

My testimony will have to do with the rates on fertilizer and fertilizer materials applicable to points in Alabama and to the rates between points within that State, and to the 13th Section application filed by the carriers, and which is assigned for hearing at this time. I will also deal with the rates to points in Kentucky and from Ohio River Crossings to destinations in Montgomery and Atlanta sub-divisions of Southeastern Territory.

In arranging my testimony my intention is to deal first with the Alabama intrastate situation, and follow with the other features that I was designated to handle.

At the present time freight charges are assessed on fertilizer and fertilizer material moving between points in Alabama, except that portion of the State affected by the Interstate Commerce Commission's decision in the Meridian Case, on basis of mileage scale prescribed by the Public Service Commission of the State of Alabama in its order dated May 26th, 1924. My Exhibit No. 157 is a statement showing the scales of rates prescribed by the Alabama Pub- [fol. 443] lic Commission for single and joint line application over the so-called standard roads operating within that State.

(Statements were thereupon received in evidence, and marked "Respondents' Exhibits Nos. 157 to 195, inclusive, Witness Drescher,") (Tes. 444-448.)

The present scale of rates applicable between points in the State of Alabama became effective on July 25th, 1924, pursuant to the Alabama Commission's order I have just referred to. Prior to that time, and extending back for a period of something like 17 years, the rates on this commodity were made by the use of the mileage scale of rates commonly referred to as the Alabama statutory scale. By statute approved November 23rd, 1907, the Alabama Legis-

lature fixed the same mileage scale of rates on fertilizer, carload and less carload, between points in that State, as were then in effect between points in the State of Georgia on carload and less carload traffic. This action by the Alabama Legislature was taken without any prior investigation, and without any hearing in respect to the reasonableness either of the rates then existing, or of the rates fixed by this statute, and resulted in substantial reductions in the rates previously in effect. There rates remained in force until they were superseded by the recent order of the Alabama Commission, except as they were changed by General Order 28 andEx Parte 74, and then the general Reduction of 1922. During the latter part of 1921, the Alabama Public Service Commission cited the carriers operating in that State to show cause why that Commission should not establish a just and reasonable scale of freight rates on all commodities moving between points within the State of Alabama. This, being the usual form in matters of that kind in the State of Alabama. In response to that citation the carriers submitted to the Alabama Commission mileage scales for application on classes and various commodities. The scale proposed by the carriers for application on fertilizer between points within the State of Alabama was substantially the scale prescribed by the Interstate Commerce Commission in the Third Royster Scale, 50 I. C. C. 34, advanced under General Order 28 and Ex Parte 74, and modified so as to make the rates end in even figures. That is, to end in zero or 5.

[fol. 444] My exhibit No. 158 is a statement showing the rates for single line application on fertilizer, carload, in effect prior to July 25th, 1924, the rates on the scale proposed by the Alabama lines subject to the General Revision of 1922. The rates on basis of the Third Royster Scale, 50 I. C. C. 34, advanced under General Order 28 and Ex Parte 74, and then reduced pursuant to the reduction of 1922, and in the last column is shown the scale of rates prescribed by the Alabama Commission in the order to which I have just referred. In proposing the scale of rates which they did in response to the Alabama Commission's citation, and which, as I have just stated, was substantially the Royster Scale prescribed in 50 I. C. C. 34, the carriers felt that its reasonableness had been fully established. Mr. Menzies has given the history of the Royster scale and shown as it is now, this

scale was prescribed by the North Carolina Commission for application in that State. He has also called attention to the fact that in the Charleston case, Docket 8627—53 I. C. C. 506, the Interstate Commerce Commission prescribed a similar scale for application from Charleston, South Carolina, to points in North Carolina, so that it appears unnecessary to cite again the origin of the scale of rates we are here proposing for application in the Southern Territory. (Tes. 448-450.)

Starting then, with the scale of rates that had been fixed by a State Commission, and adopted for application on interstate traffic by the Interstate Commerce Commission, after two exhaustive hearings, and on basis of which the carriers knew an enormous tonnage of fertilizer was being handled, the carriers felt they had every reason to believe they were proposing a fair and reasonable basis for application in Alabama. The Alabama Public Service Commission, however, did not see the matter in the same light, but instead prescribed a scale of rates shown in my Exhibit 157, for application over the standard lines, with rates somewhat higher over and in connection with the weaker roads.

As to how those rates were established which were in effect prior to July 25th, 1924. They were then the equivalent of the rates fixed by the Alabama Legislature on the 110 commodities. They, in turn, were the rates in force in Georgia at that time.

[fol. 445] These standard line scales are materially lower than the carriers proposed or than were prescribed by the Interstate Commerce Commission in the Royster Guano Company and Charleston, South Carolina, cases and reaffirmed in another case decided since the decision of the Alabama Commission. This latter case to which I refer, is the complaint of the traffic department, Goldsboro, North Carolina, Chamber of Commerce, versus Atlantic Coast Line Railroad, decided July 10th, 1924, and reported at 91 I. C. C. 315.

That exhibit that I have filed as Exhibit 158, indicates that as a result of the citation to which I referred, the carriers suggested slight increases in the Alabama intrastate rates, and that the Commission—the Alabama Commission, made still further reduction in the then existing Alabama State rates, as a result of its order. As a part of the record in this case, I have filed as my Exhibit No. 159, a copy

of the report and order of the Alabama Public Service Commission, prescribing the rates for application on fertilizer and fertilizer materials between points within that State. The scales of rates prescribed by the Alabama Commission are considerably lower than the scales prescribed by the Interstate Commerce Commission in the Blackshear Case, 87 I. C. C. 654, for application from Blackshear, Georgia, to points in Florida. They are also lower than the scale of rates on the same commodities prescribed by the Commission in the Memphis-Southwestern Case, 77 I. C. C. 473. This will be noted by reference to my Exhibit No. 160.

I have included in this statement the Royster scale rates prescribed in 50 I. C. C. 34, and an examination of the statement shows that the scale prescribed by the Alabama Commission is considerably below the level of the rates prescribed by the Interstate Commerce Commission in each of these other two cases. (Tes. 450-452.)

In its decision, the Alabama Commission made reference to the Blackshear, and the Memphis Southwestern Scales, as prescribed by the Interstate Commerce Commission, and stated, as shown on page 16 of my Exhibit No. 159, "that a just and reasonable scale of rates may be constructed by observing the Memphis-Southwestern scale as a guide, but using a somewhat lower level." In reaching this conclu-[fol. 446] sion, we think the Alabama Commission erred, for the reason that there is nothing in the Interstate Commerce Commission's decision in the Memphis-Southwestern Case to indicate that the rates therein prescribed were fixed from the standpoint of their reasonableness.

Q. Now, assuming for the purpose of this question, that the Interstate Commerce Commission should find that the transportation conditions in the Southwest were the same as in the Southeast; that the traffic conditions in the Southwest were the same as in the Southeast—and that the density of tonnage is the same, and the character of the tonnage the same, and in fact all the same, and after finding such a situation to exist in the two territories, it should determine upon a just and reasonable scale for application in the Southwestern Territory, what reason would you advance for objecting to the application of that scale in Southeastern Territory?

"A. If all of the conditions that you have outlined were found to exist, I could conceive of no reasons that the car-

riers might give for refusing to apply that scale of rates in Southeastern Territory."

The scale of rates which the Alabama Commission prescribed, and which became effective on July 25th, 1924, is not materially higher than the rates that were in force before the carriers received authority in Ex Parte 74 to make a general increase in their freight rate structure; in fact, there are a few mileage blocks as to which the present rates are the same as, or less, than the rates in effect prior to this revision.

To illustrate this, I call attention to my Exhibit No. 161, which is a statement showing the single line scale of rates prescribed by the Alabama Commission, as compared with the Alabama intrastate rates in effect on August 25th, 1920, and which was immediately prior to the effective date of the general increase under Ex Parte 74, and also as compared with the intrastate rates in effect just prior to July 25, 1924, on which date the present Alabama scale took effect. This last table of rates, that is, those that were in effect just prior to July 25, 1924, are the rates shown in the first column subjected to the Ex Parte 74 increase, and the [fol. 447] general Reduction of 1920. (Tes. 452-454.)

As shown by this statement, the scale of rates which the Alabama Commission prescribed in 1924, has taken away from the carriers most of the increase which they were granted in 1920 under Ex Parte 74. The percentage of increase then authorized in Southern Territory was 25 per cent. In 1922 those rates were subjected to a general reduction of 10 per cent., so that the present rates should be approximately 12½ per cent higher than the rates in effect on August 25th, 1920. The general level of the recently prescribed Alabama scale is much less than 12½ per cent. higher than the rates that were in effect on August 25, 1920. The effect of the new scale of rates prescribed by the Alabama Commission is to deny the carriers the full measure of the general increase granted in 1920 over a scale of rates which the Alabama authorities had prescribed for application within that State. The last column of figures shown on this exhibit indicates that the percentage of reduction to which the rates in effect on July 25th, 1924, were

subjected, when this new scale of the Alabama Commission became effective.

My next exhibit is the statement comparing the Alabama Commission's scale with the Memphis Southwestern scale, which shows how much the interstate scale is higher than the Alabama scale. That will be found in my Exhibit No. 162, in which I have used the single line scale for the purpose of illustration. I have also included in this statement the scale of rates prescribed by the Interstate Commerce Commission in the Meridian Rate Case, I. & S. Docket 1372 —66 I. C. C. 179, and which applies from Meridian, Mississippi, to points in Alabama for distances up to 200 miles. It will be noted that for each and every block of distances the Alabama Commission's scale is less than either the Memphis-Southwestern or the Meridian scale. The Memphis-Southwestern scale ranges from 4 to 25 per cent of the Alabama Commission's scale, while the rates under the Meridian scale are from 12½ to 35 per cent. higher than the Alabama scale.

It is doubtful to my mind whether the Memphis, Southwestern or 9702 scale of rates on fertilizer is a fair and reasonable scale for application in the Southwest, and this view is supported by the proposed report of Attorney-Ex- [fol. 448] aminer Disque in the Consolidated Southwestern Cases, wherein he recommends the abandonment of that scale and the application of the Class E basis throughout Southwestern Territory. We, of course, do not know what the Commission is going to do with respect to Attorney-Examiner Disque's report in that case, but in view of the influence that the 9702 scale presumably has had upon the Alabama Commission, and also upon this Commission in the Blackshear Case, the Commission's final action on the Examiner's proposed report should be awaited in order to determine what rates will obtain in that territory.

The present Alabama scale is from 5 to 75 cents per ton less than the scale of rates obtaining under the 9702 scale. If the Attorney-Examiner's report in the Southwestern Case is sustained, the fertilizer rates in the 9702 territory will be somewhat increased. If we reconstruct the present Alabama scale by adding to it the increases to which the 9702 scale will be subjected, if the Attorney-Examiner's proposed report is adopted, we will get rates that will be

considerably higher than those which the Alabama Commission has prescribed, and also rates that will be more in harmony with the Royster scale which the carriers are here proposing. To illustrate this situation, I wish to call attention to my Exhibit No. 163, which is a statement of the rates on fertilizer applicable intrastate between points in Alabama, compared with the 9702 scale and the tentative scale of the Attorney-Examiner in the Consolidated Southwestern Cases. If the scale of rates applicable in this portion of Southwestern Territory was the proper guide to use in determining the rates for application in Alabama at the time the Alabama scale was prepared, to which theory we, of course, do not subscribe, it would appear that the Alabama rate should be revised to reflect the same relationship to any increased scale that might be prescribed for application in the Southwest that the Alabama rates now bear to the 9702 scale. (Tes. 454-457.)

If that scheme that I suggest were adopted, it would bring the Alabama rates substantially up to the basis which I am proposing, of the interstate and intrastate application in this case, but not in all cases. For the longer distances there would be a difference amounting to as much, I think as 17 cents a ton. I see one instance here where it would [fol. 449] be a little more than that. It would suggest it more nearly in harmony with the basis I suggest.

The Alabama reconstructed scale, as it is shown on my exhibit is made by adding to the present Alabama scale the amount that Attorney-Examiner Disque scale—proposed scale of rates, are higher than the present 9702 scale.

To illustrate, how the rates which the Alabama Commission prescribed compare with the normal interstate rates maintained by the various Southern lines on fertilizer between points in the South, I have prepared two exhibits. The first of these is a statement showing the local scale of rates on fertilizer of various Southeastern lines as compared with the single line scale prescribed by the Alabama Commission, also the third Royster scale, prescribed by the Interstate Commerce Commission, in 50 I. C. C. 34. The notes which are explained on the last sheet of the exhibit, indicate the territories in which the scales apply. The Central of Georgia scale, under Note 6, and also the scales of the Southern Railway and the Atlanta & West Point Route

are those prescribed by the Georgia Railroad Commission, brought up to date under the several increases and the general reduction of 1922.

It will be noted that the scale of rates prescribed by the Alabama Commission is considerably below the level of these other scales which measure in quite a large degree the rates which these lines apply on fertilizer in the territory in which those scales apply. The so-called Third Royster Scale is of course higher than the scale prescribed by the Alabama Commission, but is not higher than the general level of the other scales shown on this statement, excepting those which are the same as the Georgia State scale.

The second of this series of exhibits, is my No. 164, and which is a comparison of the specifically published interstate rates on fertilizer from important manufacturing points in the State of Alabama for single line application up to 200 miles from the manufacturing points, with the rates on basis of the Alabama Commission's scale, and on basis of the Third Royster scale. The origin points are Birmingham, Columbia, Dothan, Huntsville, Montgomery, Selma and Troy, Alabama, which were selected, because [fol. 450] of my understanding that the largest fertilizer plants in the State of Alabama are located at these points. The destination points are on the lines radiating from these manufacturing points for distances up to 200 miles.

The exhibit, which consists of 58 sheets of rates, shows that the Alabama Commission went very much below the level of the interstate rates in fixing the scale for application within that State. Just to illustrate, take the rate from Birmingham to Sulphur Springs, Georgia, the first point outside the State of Alabama, shown on sheet 1 on the exhibit. The distance is 112 miles, the present rate $2.82, the Alabama Commission prescribed $2.15 for that distance. On the third sheet, from Kewanee, Mississippi, for 136 miles, the present rate is $3.04, the Alabama Commission prescribed a rate of $2.35 for a haul of the same distance within the State of Alabama. On sheet 4, from Birmingham to Bullochsville, Georgia, a station on the Atlanta, Birmingham & Atlantic Railway, 192 miles from Birmingham, the present rate is $3.49, the Alabama Commission fixed for that distance a rate of $2.95. Similar comparisons may be drawn from practically every one of

the rates included in the exhibit, but it is not necessary to consume the time that will be required to draw attention to all of them. (Tes. 457-460.)

Those that I have pointed out are typical of the exhibit. They are the first stations beyond the State line, on the particular route that I have mentioned. The statement shows what the rates will be for these distances on the basis of the Third Royster scale, and while there will be some advances, there will also be a larger number of reductions.

I have prepared an analysis of this exhibit, and have filed it as my Exhibit No. 166. It shows that out of a total of 2,355 rates, the Alabama scale is less than the interstate rates shown on this exhibit in 2,145 instances, it is higher in 182 instances, and it is the same in 28 cases. The substitution of the Royster scale for the present interstate rates from these manufacturing points to the destinations shown on this exhibit will produce 1,114 reductions, 963 advances, and 278 instances in which there will be no changes in the present rate.

[fol. 451] The purpose of this exhibit is to show, first, that the proposed Royster scale will result in more reductions and advances in the rates of the interstate rates in this territory, and secondly, to show how much below the interstate rates the Alabama Commission saw fit to make the rates for application in that State.

As to how the rates prescribed by the Alabama Commission, and the rates in the Third Royster Scale, compare with the rates on fertilizer which the Interstate Commerce Commission found not unreasonable from Mount Pleasant to points in Mississippi.

In the case of the Mount Pleasant Fertilizer Company versus Louisville & Nashville Railroad Company et al., I. C. C. Docket 7750, and reported at 50 I. C. C. 253, complaint was made against the rates charged on shipments of fertilizer from Mount Pleasant, Tennessee, to a number of points in Mississippi on the Gulf, Mobile & Northern Railroad. The distances to these particular points ranged from 158 to 337 miles, and the rates in effect when the shipments moved, were $3.00 and $3.20 per ton. The $3.00 rate applied to points which were from 158 to 226 miles from Mount Pleasant, while the $3.20 rate applied to stations

which were from 248 to 337 miles distant. The present day equivalent of the $3.00 rate is $4.28, and of the $3.20 rate $4.50 per ton.

My exhibit No. 167 shows how the rates on the Alabama scale, and the Third Royster scale, for corresponding distances, compare with, and the amounts that they are higher or lower than, the present day equivalent of the rates found by the Interstate Commerce Commission to be not unreasonable or unjustly discriminatory. For the distance of 158 miles from Mount Pleasant to Brownsfield, Mississippi, it will be noted that the Royster scale produces a rate 90 cents per ton less than the present day equivalent ($4.28) of the $3.00 rate, which the Commission refused to condemn, while the Alabama scale produces a rate of $3.03, which is $1.25 per ton less than the present day equivalent of the rate which the Commission approved, and is only 3 cents per ton higher than that rate was before the case was tried, and before either of the general increases.

[fol. 452] I did not say the Royster scale was higher than the present-day equivalent of the rate fixed by the Commission; the Royster scale is less than the present-day equivalent of the rate which the Commission refused to condemn in that case.

It will be seen that with the exception of the last three points in the list, that is Philadelphia, McDonald, and Neshoba, both the Alabama and the Royster scales produce lower rates than the present-day equivalent of the rates which the Commission approved from Mount Pleasant, Tennessee. That decision was based on the particular record in that case.

By Mr. Moore:

"Q. You do not think the Commission would prescribe rates like that, if it were fixing rates for application for distances varying from 158 miles to 337, do you, Mr. Dresche?

"A. I thing we can show——

"Q. (Interrupting.) With a variation of 25 cents per ton for the distance 140—158 miles short distance, and a long distance of 337?

"A. I would not like to predict what the Commission would do right now, with the scale of rates such as those are."

My next series of exhibits deal with the question of discrimination of the Alabama State rates versus interstate rates, as covered by the allegations in the 13th section petition. I will identify these exhibits and explain what they are intended to show. As the first of this series of exhibits deals with the question of discrimination of State against interstate traffic, resulting from the application of the recently prescribed scale of rates in Alabama, I call attention to my Exhibit 168, which is a chart showing the geographical outlines of the State of Alabama, and also the lines of railroads between certain fertilizer manufacturing points in Alabama, and fertilizer manufacturing points in adjacent States. I have shown on the map or chart the names of the railroads running between these several manufacturing points. That is a composite of the chart that I will [fol. 453] subsequently file. These points outside the State of Alabama were chosen because of my understanding that there is a fertilizer movement to points at each one of them, and the territory between these points and the Alabama cities may, I think, be considered as a natural and logical marketing territory for those factories. (Tes. 460-464.)

Dealing with the Louisville & Nashville Railroad, I call attention to my exhibit No. 169, which shows the present adjustment of rates from Birmingham to agency stations on our road between Birmingham and Nashville, in comparison with the rates for equi-distant hauls from Nashville in the reverse direction to agency stations intermediate to Birmingham. I call particular attention to the fact that the rates from Birmingham to stations on the L. & N. are very much less than the rates for corresponding distances from Nashville, Tennessee; that the rate from Birmingham to Athens, Alabama, for 98 miles, is $1.95; from Nashville to an equi-distant station in Alabama, Elkmont, the rate is $2.59; from Birmingham to Elkmont, 107 miles, the rate is $2.05; from Nashville to Athens, for the same distance, the rate is $2.59. Athens and Elkmont represent about the midway points. The exhibit shows very

clearly, that insofar as the rates are concerned, that Nashville is a considerable disadvantage as compared with Birmingham in making shipments to points in Alabama. There is a movement from Birmingham to those stations. I have just received information that there have been carload shipments this season from Birmingham to the following stations in Alabama, as shown on this exhibit: Trafford, Hayden, Blount Springs, Garden City, Haneeville, Cullman, Falkville, Hartselle, Decatur, Athens and Elkmont. I did not find out whether there were movements from Nashville; it appeared to me that there was not much of a probability of a movement from Nashville to those points, in view of the difference in the freight rates. When I say "those points" I have in mind the destinations in Alabama.

By Com. Eastman:

"Q. Now, would that be so if these interior points based their prices on the port rates? On the port price of fertilizer?

[fol. 454] "A. Well, I don't know just what the—I am not sure as to the basis upon which fertilizer is sold, Mr. Commissioner, and I could not answer that, but I simply took the rate situation as she stands."

As a part of this statement I have prepared a chart showing the relative rate levels as between Birmingham and Nashville to the territory between these two points. The purple line on the chart indicates the rate level from Birmingham, while the red line shows the rate level from Nashville. This chart illustrates the extent to which the rates from Nashville are higher for corresponding hauls than the rates from Birmingham. The dip in the rates to the station that is as far from Nashville as Aspen Hill, Tennessee, is from Birmingham, is due to the low measure of the rate from Nashville to Decatur, which is the equi-distant point from Nashville. That rate is now $2.25 per ton, and is less than the rate to points on either side of Decatur. The inequalities shown by the exhibit to exist will be removed by the substitution of the Royster scale, that is to say, each point will be given the benefit of its location, and there will be no lower rates on State traffic than applies for

corresponding distances on interstate traffic. There is a violation of Fourth Section there now, but it is permitted by appropriate Fourth Section application.

"Q. One thing about that exihibit I do not quite understand. You have got at the end of the red line in the left-hand corner the words "Nashville, Tennessee." You show that as the starting point?

"A. Yes, sir.

"Q. And up here in the right-hand corner you have got "Nashville, Tennessee," also.

"By Mr. Moore:

"Q. The stations on the top should be eliminated should they not?

"A. In dealing with the rates from Nashville, of course, the stations at the top of the statement should not be considered. This simply illustrates the rate level from Nashville as compared with Birmingham for points that are the [fol. 455] same distance from Nashville as these points at the top of the map stations are from Birmingham." (Tes. 464-468.)

That is why we have two different points indicated on the lines, as the location of the State line.

By Com. Eastman:

"Q. Is that a Fourth Section violation at Aspen Hill now?

"A. The violation is not as Aspen Hill, Mr. Commissioner; the violation is from Nashville to Decatur—Decatur being the point that is as far away from Nashville as Aspen Hill, Tennessee, is from Birmingham.

"Q. There is one at Decatur?

"A. From Nashville to Decatur; yes, sir."

The next of this series is my Exhibit No. 170, in which I have shown the present rates from Decatur, Alabama, versus Chattanooga, Tennessee, to agency stations on the Southern Railway in Alabama between those two points. This statement shows that Decatur is now able to ship into these Alabama points at rates very much less than Chat-

tanooga has to equi-distant points on the same line of railroad. To illustrate, I will call attention to the $1.65 rate from Decatur to Scottsboro, Alabama, for 66 miles, as against a rate of $2.10 for the same distance from Chattanooga, Tennessee, to Kim Rock, Alabama. The chart or graphic which accompanies this statement shows the level of the rates from Decatur, Alabama, all of which are intrastate, as compared with Chattanooga, Tennessee, from which the haul to each of these stations in interstate. The midway point would be one about 41 miles, Gurley, Alabama, from Decatur, and Cedar Grove, from Chattanooga. The rate from Decatur to Gurley, Alabama, is $1.40, and from Chattanooga to Cedar Grove it is $1.80; a difference of 40 cents a ton in favor of the intrastate shipper.

The next shipment of this kind is one dealing with the situation from Birmingham, Alabama, versus Rome, Georgia, to intermediate stations on the Southern Railway. There is attached to this exhibit a sketch of the line of the [fol. 456] Southern Railway operating between these two cities. That is Exhibit No. 171. This statement shows that the rates from Birmingham to stations in Alabama are somewhat less than the rates for corresponding hauls from Rome, Georgia, to stations in Georgia, and that when we cross the State line from Georgia into Alabama the rates from Rome become materially higher than for an equi-distant haul from Birmingham to stations in Alabama. For instance, the rate from Birmingham to Cook's Springs, Alabama, is $1.25, for 27 miles; while from Rome to Langdon, Alabama, 27 miles, the rate is $1.69. From Birmingham to Anniston, the midway point in this stretch of territory, the rate is $1.60 for 63 miles, while from Rome to Anniston for the same distance the rate is $2.16, or 56 cents more than from Birmingham.

Similar comparisons might be made by citing other points shown in the exhibit, for example, from Birmingham to Piedmont, Alabama, the rate is $1.85 for 88 miles, while from Rome to Seddon, Alabama, for the same distance, the rate is $2.34.

While detailed comment is unnecessary, I would call attention to the abrupt jump that the rates make at the State lines, both from Birmingham and from Rome. On the sec-

ond sheet of the rate statement, it will be seen that from Birmingham the rate to the last station in Alabama is 203 cents, while to the first station over the line, just one mile farther, the rate is 47 cents a ton higher. From Rome, Georgia, the jump at the state line is 45 cents for a difference in distance of only one mile, the two points here being Fearing, Georgia, and Tecumseh, Alabama.

This statement is also accompanied by a chart showing the relative rate levels as between Birmingham and Rome to agency stations on the Southern Railway between those two points. It shows graphically that intrastate rates from Birmingham are very much lower than interstate rates from Rome.

While I have not qualified as a transportation man, I am familiar in a general way with the transportation conditions on our own line, and also with the various lines covered by the exhibits that I am filing. I know of no transportation condition existing that would warrant these [fol. 457] abrupt breaks in the rates at the State lines. I account for it by the actions of the Alabama and the Georgia state Commissions in making lower rates between points within those States. That is the only explanation I have for it.

Illustrating the situation further, I wish to call attention to my Exhibit 172, which is a statement showing the rate situation as between Birmingham, Alabama, and Columbus, Georgia, to agency stations on the Central of Georgia Railway between these two cities. Columbus, Georgia, is just over the State line, and there are no agency stations in Georgia intermediate to the Georgia-Alabama State line. All the rates, therefore, shown on this exhibit from Columbus are interstate rates, whereas, the rates from Birmingham are intrastate. The statement shows that Birmingham can ship fertilizer at a rate of $1.25 to a point 29 miles away from Birmingham (Sterrett's), while the rate from Columbus to Opelika, also 29 miles distant, is $1.69, or 44 cents higher than the intrastate rate from Birmingham. (Tes. 468-472.)

Putting that another way, $1.25 rate will carry Birmingham 30 miles out on the Central of Georgia Railway, whereas, $1.24 rate will carry the Columbus shipper but 15 miles.

Birmingham can ship to Childersburg, Alabama, 43 miles away, at a rate of $1.40, while the rate for that distance, from Columbus to Waverly, Alabama, is $1.92. Alexander City, Alabama, is 82 miles from Birmingham, and the rate is $1.80. The same point is 75 miles from Columbus, Georgia, and the rate is $2.37. Here Birmingham has an advantage of 57 cents a ton for a 7-mile additional haul. There is also accompanying this statement a chart or graphic, indicating the relative rate levels from the two points to these stations on the Central of Georgia Railway, and it shows that the Alabama intrastate rates are very much less than the interstate rates from Columbus.

Now, of course the application of the carriers' proposed scale would remove those discriminations or those discrepancies. The drop in the rate from Columbus at the end of the graph is due, of course, to the low measure of the rates from Columbus to Birmingham; the Central of Georgia meeting that competitive situation.

[fol. 458] Next, I wish to call attention to the rate situation from Birmingham, Alabama, to Atlanta, Georgia, to stations on the Southern Railway between these two fertilizer manufacturing points, and my Exhibit No. 173 shows this situation. Here again we see that the Alabama manufacturing point has a decided advantage over the Georgia point in making shipments of fertilizer to points in Alabama. To Edwardsville, a midway point, Birmingham has a rate $1.85, while to Columbus, Atlanta has a rate of $2.37. (Tes. 472-474.)

My next exhibit shows the situation from Montgomery, Alabama, as compared with Richland, Georgia, to stations on the Seaboard Air Line Railway between those two points. That is Exhibit 174; the Alabama intrastate scale of course applies from Montgomery to stations on the Seaboard Air Line in Alabama, and they are very much less than the rates now in effect from Richland, Georgia, to equi-distant hauls, to points in Alabama. I would also call attention in connection with this statement to the abrupt jump that the rates make at the State line, just as I have done in connection with one or two of my other exhibits. That is shown graphically in the chart, and the exhibit.

The Central of Georgia Railway has a line running between Montgomery, Alabama, and Columbus, Georgia, and my Exhibit 175 shows the rate adjustment from Montgom-

ery to stations on that line as compared with the rate adjustment from Columbus to equi-distant stations in the reverse direction. Here we find again that the intrastate rates are very much less than the interstate rates applicable from Columbus. There is also a graphic accompanying this statement, which shows the relative adjustments from the two points.

The rate from Montgomery to Peachburg is $1.45, and the distance is 47 miles; from Columbus, Georgia, to Peachburg, Alabama, the rate is $2.14, for 49 miles, a difference in the rate of 69 cents, for a difference in distance of only two miles.

Coming now to the Western portion of the State of Alabama, I call attention to the adjustment from Decatur, Alabama, versus Corinth, Mississippi, to intermediate agency stations on the Southern Railway, and this will be found in my Exhibit No. 176. This statement, like the previous [fol. 459] ones, shows that Decatur has materially lower rates to Alabama points than obtain from Corinth, Mississippi, for like hauls, to points in Alabama. From Decatur to Sheffield, 45 miles, the rate is $1.40, while from Corinth to Sheffield, 53 miles, the rate is $2.10.

"Q. The abrupt jump there at the State line, from Corinth is very noticeable; how do you account for that?

"A. The low rates in Mississippi from Corinth to destinations in Mississippi. We have here a jump of 78 cents a ton in the rate for a difference in distance of 3 miles."

My chart very clearly shows the effect; there is a graphic accompanying this statement, and shows the relative rate levels. The rates from Birmingham, Alabama, to stations on the St. Louis & San Francisco Railway in Alabama, are considerably less than the rates which apply from corresponding distances in the reverse direction, from Tupelo, Mississippi, to points in Alabama on the same road. This is illustrative, in my exhibit No. 177. I would just call attention here to the rates to Carbon Hill, Alabama, Birmingham having a rate of $1.55 for 60 miles, as compared with $2.10 from Tupelo, to Guin, Alabama, for the same distance. The graphic accompanying this statement shows the relative rate level between these two points. There again, the effect of State made rates in Mississippi

and Alabama are depicted by my showing on the chart. (Tes. 474-476.)

Returning again to the Louisville & Nashville Railroad, I wish to call attention to the adjustment prevailing from Mobile, Alabama, and Pensacola, Florida, to stations on the L. & N. Railroad as far north as Montgomery. Pensacola is located on our Pensacola Division, which connects with our main line at Flomaton, Alabama. It is 16 miles nearer Flomaton, and destinations north of Flomaton than is Mobile, but the rates to very many of these stations to Mobile, are now lower than to Pensacola. My exhibit No. 178 shows the situation. The statement shows the rates that were in effect from these two points prior to the effective date of the Alabama Commission's order in the fertilizer case, that is July 25th, 1924. It will be noted that to part of this line, as far north as but not in-
[fol. 460] cluding Greenville, Alabama, 134 miles from Mobile and 118 miles from Pensacola, the rates from the two points were the same. To stations, Greenville and north, the rates from Mobile were higher than from Pensacola. The recently prescribed scale of the Alabama Commission has changed this situation, and has given to Mobile a decided advantage to a greater portion in this territory, notwithstanding the fact that the distance favors Pensacola.

The rates from Decatur, Alabama, to stations on the main line of the L. & N. Railroad in Alabama are less than the rates on fertilizer from Decatur to stations on the main line of the Louisville & Nashville Railroad north of Decatur in Tennessee and Kentucky. This is illustrated in my Exhibit 179. The rate from Decatur to Cullman, Alabama, a point 32 miles south of Decatur, is $1.30, while to Prospect, Tennessee, 30 miles north of Decatur, the rate is $1.69. This statement shows the advantage in the way of freight rates that parties at these stations in Alabama have over those in Kentucky and Tennessee in purchasing fertilizer from Decatur. In all probability, the parties located on our line contiguous to Decatur, would be disposed to buy fertilizer at Decatur, particularly if they stood the freight rates.

Now, in the previous exhibits I have filed showing the advantages that Birmingham and Montgomery have in the way of freight rates on fertilizer over Columbus, Georgia,

to points in the State of Alabama, I would like to farther illustrate this condition by calling attention to the adjustment as between Eufaula, Alabama, and Columbus, Georgia, to stations on the Central of Georgia Railway in Alabama. Eufaula is located on the Alabama side of the Chattahoochee River, while Columbus is on the Georgia side of the same stream. The Central of Georgia Railway has a direct line running from Montgomery to Eufaula. From Columbus it has a line running to Union Springs, Alabama, at which point connection is made with the line extending from Montgomery to Eufaula. Mr. Exhibit No. 180 is a statement showing the present rates on fertilizer from Alabama points as compared with rates on like traffic from the Georgia points to Montgomery and intermediate agency stations on the Central of Georgia Rail-
[fol. 461] way. This exhibit shows that Eufaula enjoys very much lower rates than does Columbus. For example, the rate from Eufaula to Cedar Plains, Alabama, is $1.30 for 35 miles, while from Columbus, Georgia, to Hurtsboro, Alabama, for the same distance, the rate is $1.80. There is a chart accompanying this exhibit also which shows the relative rate level from these two points to stations in Alabama. (Tes. 476-479.)

This statement covers points between Columbus and Montgomery, on the one hand, and between Montgomery and Eufaula on the other. It does not cover points from Columbus to stations on the Central of Georgia west of Union Springs, and in the direction of Eufaula.

The scale of rates recently prescribed by the Alabama Commission does not apply from Birmingham to stations on the Alabama Great Southern Railway between Birmingham and Meridian, and the disparities as between State and interstate, to which I have called attention, do not exist in the rates from Birmingham, Alabama, versus Meridian, Mississippi, to stations on the Alabama Great Southern Railroad between those points. Here the rates are more nearly in line one with the other, this situation being due to the order of the Interstate Commerce Commission in the Meridian Case. If it was not proper to have an intrastate adjustment from Birmingham to these Alabama points materially lower than from Meridian to the same points, there are no conditions, so far as we are advised, that will justify the present disparity in favor

of the intrastate rates from Alabama manufacturing points, as compared with the interstate rates from points outside of Alabama in the several instances to which I have called attention, and to all of the other similar situations that now exist.

My exhibit No. 181 is statement showing the present rates on fertilizer from Birmingham, Alabama, and Meridian, Mississippi, to points on the Alabama Great Southern Railroad between those cities, and the rates for corresponding distances on basis of the Third Royster scale.

[fol. 462] "By Com. Eastman:

"Q. Now, what causes the drop in the rate from Birmingham to Polk Junction and Tuscaloosa? You see that rate continually increases when you get to Cottondale, and then it drops down to Polk Junction and Tuscaloosa, and comes up again at Crabtree.

"A. I cannot explain the reason for it, except there was some competitive conditions there, Mr. Commissioner.

"Mr. Aldridge: The L. & N. comes in there.

"The Witness: Is that what makes the difference? I can see now."

Just before I left Louisville there was brought to my attention an inconsistent and anomolous situation existing in the present adjustment of rates on fertilizer in Alabama, to which I would like to call attention, and that is in connection with the rates on fertilizer from Montgomery to certain stations on the Mobile & Ohio Railroad, and from Birmingham to stations on the Alabama Great Southern Railroad, located in so-called Meridian Territory. The Alabama scale is not applied from Montgomery to stations on the Mobile & Ohio Railroad west of Tuscaloosa, or from Birmingham, Alabama, to various stations on the Alabama Great Southern Railroad west of Tuscaloosa, because of the order of the Interstate Commerce Commission in the Meridian Case. They are not applied by those lines. The Louisville & Nashville Railroad was not a party to that proceeding, and the order issued in connection therewith did not run against that line. There appears to be, therefore, no prohibition running against the application of the joint line scale of rates

prescribed by the Alabama Commission, in making rates on fertilizer from Montgomery or Birmingham to these stations, on the Mobile & Ohio and Alabama Great Southern Railroads. The rates which have direct application from Montgomery over the Mobile & Ohio Railroad, and from Birmingham over the Alabama Great Southern Railroad to stations on those lines west of Tuscaloosa are higher than the joint line scale prescribed by the Alabama Commission applicable over the Louisville & Nashville Railroad in connection with the Mobile & Ohio Railroad, [fol. 463] or the Alabama Great Southern Railroad via Tuscaloosa. Now, the extent to which this is true is shown in the exhibits which I have filed, No. 182. I thought that that was the situation which I might particularly call attention to in this proceeding. (Tes. 479-482.)

Other witnesses have presented testimony and many exhibits for the purpose of proving that the Royster scale prescribed in 50 I. C. C. 34, and brought up to date under the several general increases and the general reduction in 1922, is a fair and reasonable basis for application throughout the South, and we rely upon their showing as a justification of the proposed scale for application in the South generally, including the Alabama intrastate traffic. I have, however, a few exhibits which I desire to file to supplement the testimony, and the exhibits already put into the record in support of the reasonableness of the proposed scale. The exhibits show the per car earnings that will accrue to the carriers from the handling of fertilizer and fertilizer materials, in comparision with the per car revenue derived from the handling of other so-called low grade traffic. Now, in preparing and submitting these comparisons of per car revenue on low grade traffic, with the per car revenue the carriers will derive from the fertilizer business, if the proposed scale is adopted, we had in mind showing how much revenue we would obtain for handling other kinds of traffic in carload units. In making comparisons of this character, due allowances have been made by the carriers for the net, that the amount of net tonnage handled, in the case of some of the other commodities, is considerably greater than in the case of fertilizer. However, when measured in terms

of service performed, it does not require very much more expense, if any, to handle a carload of sand and gravel, for instance, in a train, than it does to handle a car of fertilizer. In determining to suggest the application of the Royster scale for general use in the Southeast on fertilizer, the carriers did not have in mind the per car earnings on sand and gravel, iron or steel articles, coal, pig iron, or any other low grade traffic. They had in mind, that this scale, in their judgment, and based on past experience, would be a just and reasonable scale for application on this commodity throughout Southern Territory, [fol. 464] and in submitting the comparisons of carload earnings on other commodities in the South, and in submitting comparisons of the rates on fertilizer and other commodities in the North, they do so with the idea of justifying the reasonableness of the scale, and not as indicating the influences which have controlled their determination to establish these rates. I make this explanation in order that it may be clear at the outset that my purpose in submitting these exhibits is merely to indicate what the carriers are earning per car on other traffic which they handle in substantial volume, and I believe that such comparisons are particularly pertinent in this case, as we have been notified that it would be decided in the light of the new law resulting from the recent joint resolution of Congress, in which this Commission now has under consideration in Docket 17000.

After we get the sand in our train, I don't think it costs us any more, substantially more, to haul a car of sand and gravel over the road than it does to haul a car of fertilizer. Based upon the average loading of sand on the Louisville & Nashville Railroad for a period of one year, which was 93,600 pounds, and on fertilizer of 48,400 pounds, and assuming 40,000 pounds as the weight of the car, there would be a difference of about 45,000 pounds in the total weight of the load; the car would weigh the same in both instances, and the sand weigh 93,600 pounds, and the fertilizer 48,800 pounds. I figured that would be about 44,800 (48,800). The average loading of fertilizer on our line for the 12 months period for which we have ascertained that information, was 24.4 tons per car. I think that is higher than some of the other lines, and it is still less than some others that I have heard about. (Tes. 482-5.)

In regard to the cost of hauling: I am not an operating man. I have not really investigated costs of operation; I simply express that as my personal opinion. Our engines have a certain tonnage rating, which means the amount *to* tonnage they can haul economically.

If all of the cars in the train were loaded with sand and gravel and to the loading which I have indicated, we could not haul as many cars as we could of cars loaded with fertilizer, but we do not handle any sand, and we do not handle any fertilizer that way, and I was simply making [fol. 465] my statement on the basis of our actual experience in moving the traffic. They enter into the consist of the train, and every car of sand and gravel will go farther to fill out the maximum tonnage of the locomotive than a car of fertilizer will. I cannot give you the average haul for sand and gravel; I think it is relatively short distance. I think it is shorter than fertilizer. This average weight of about 24 tons per car that you mentioned, is based on the average of that 64 account, that we submit to the Interstate Commerce Commission in our report. That is based on the average weight of the material, as well as fertilizer—materials that are in that 64 account.

The illustration that I have been dealing with is an extreme illustration, and I will, in my testimony, refer to lumber and other commodities that do not load as heavy as sand and gravel, and that move longer distances; I will refer to lumber, on which the average loading is just a little bit more than the average loading on fertilizer. Sand and gravel is not quite the heaviest loading commodity to which I refer; I have some statements on coal, and our average loading of coal is slightly more than sand and gravel.

Some time ago, we obtained a list of the shipments of sand and gravel, crushed stone, and screenings, that moved between points on our line during the period of one month. For the purpose of this case I have set down all of the points except some few in Illinois and Indiana, between which this movement took place, and computed the per car revenue on basis of the present rates, and the average loading on out road for the 12 months period, July 1st, 1923, to June 30th, 1924, inclusive. Then, I have shown in comparison with this the per car revenue that we would

earn for handling a car of fertilizer between the same points at the rates on basis of the Alabama Commission's scale, and the so-called Third Royster scale. In making this computation I have used an average loading of 24.4 tons on fertilizer, which was the average loading on our road during the year ending June 30th, 1924. The result is shown in the statement I have filed as Respondents' Exhibit No. 183. It will be noted that the Alabama scale will produce materially less per car revenue on fertilizer [fol. 466] than do the present rates on sand, gravel and stone, between the points where this traffic actually moved. The Royster scale will result in larger per car earnings on fertilizer than the Alabama scale, but those earnings will not be materially, if any, higher than the revenue we would earn for the handling of sand, gravel and stone at the present rates, from and to the points where this traffic actually moved. (Tes. 485-488.)

The next statements made comparisons of the per car earnings on coal, from Birmingham, as representative of the coal mining district in Alabama, to stations on the Louisville & Nashville Railroad as far south as Montgomery; to stations on the Southern Railway as far east as Rome; to stations on the Alabama Great Southern Railroad southwest to Meridian, Mississippi; to stations on the Central of Georgia Railway southeast to Columbus, Georgia; and to stations on the St. Louis-San Francisco Railway as far as Corinth, Mississippi, with the per car revenue that the carriers would earn for handling fertilizer for like distances at the rates under the Royster scale.

My exhibits 184, 185, 186, 187 and 188 show that the fertilizer rates on basis of the Royster scale will be productive of less per car revenue than the coal traffic. I never made any comparisons on the basis of the gross-ton miles, including the weight of the car, and also including both the loaded and empty car movement.

The last five exhibits make comparisons of the per car earnings on fertilizer with similar earnings on coal from Alabama points, but similar results may be obtained by making comparisons with the earnings on coal from mines in Western Kentucky and also in Eastern Tennessee and Southeastern Kentucky.

In this connection, I call attention to my Exhibit 189, which makes the comparison with the per car earnings on

coal from mines in Western Kentucky to stations on the Louisville & Nashville Railroad, as far south as Decatur, Alabama, and southwest as Memphis, Tennessee. These Western Kentucky mines are natural sources of coal supply for the destination points shown, and a large tonnage is actually moved at these rates. Also, the rates to Nashville, Clarksville, Memphis, Milan and Humboldt, are the present-day equivalent of rates approved by the Interstate [fol. 467] Commerce Commission, and from that standpoint we feel that the reasonableness of the coal rates to these stations is not open to question.

My Exhibit No. 190 is statement showing the per car revenue that we receive for handling coal from the Jellico Middlesboro Group in Southeastern Kentucky and Eastern Tennessee to Louisville, Kentucky, and Cincinnati, and intermediate stations on the Louisville & Nashville Railroad in comparison with the per car earnings on fertilizer handled for like distances at rates on basis of the Royster scale. Here again we find that the Royster scale will be productive of less revenue per car on fertilizer than the coal rates from this group of mines to the stations set out in the exhibit. I would like to add here too that those coal rates to Cincinnati and Louisville have also been approved by the Interstate Commerce Commission. The reasonableness of those rates is not open to question in this proceeding. I have some more coal exhibits. A similar situation is found when we make the same sort of comparison with the rates and per car revenue on coal from natural sources of supply to important destinations in the South, and this will be confirmed by reference to my Exhibit No. 191.

Coal is a low grade commodity, of lesser value than fertilizer; coal has a value at the mines of from somewhere around 75 cents to $2.00 a ton, according to the grade, and of course the value of fertilizer is considerably more than that. (Tes. 488-491.)

Coal moves in very much greater volume than fertilizer does. There is a steadier movement of coal than there is of fertilizer. It is a commodity that the carriers have recognized needed low rates in order to move the traffic, particularly for considerable distances. Notwithstanding that, the per car revenue as shown by these exhibits, in the case of coal, is substantially less in most instances than

the per car revenue on fertilizer; my exhibit shows that to be true.

I would not say it was a fact that the per car revenue on coal is as a rule greater than the per car revenue on any other traffic that is handled by the railroads; I have not made a test of that; of course manufactured commodi- [fol. 468] ties—some manufactured commodities give us a great deal higher per car revenue than coal does. I have not any in mind. At the next hearing, if you want me to do so, I will cite you to some instances of that kind.

Bituminous asphalt rock, a road-building material, it is shipped in large volume from Bowling Green, Kentucky, and the rates that apply on this traffic to stations on the Louisville & Nashville Railroad yield greater per car revenue than will the Royster scale on fertilizer for equal distances. My Exhibit No. 192 confirms this statement. Likewise, the handling of pig iron from Birmingham to points in the Southeast at the present rates is productive of greater per car revenue than would be the handling of fertilizer for like distances under the Royster scale of rates. This is shown in my Exhibit No. 193.

The last of these exhibits is one in which I have shown the rates and per car revenue on lumber from stations on the Louisville & Nashville Railroad to Ohio River Crossings and Lexington, Kentucky, in comparison with the rates and per car earnings on fertilizer at the Royster scale for like distances. This is my Exhibit 194. Here we have the commodities the average loading of which is only slightly higher than the average loading of fertilizer, and which moves in the same kind of cars. As shown in the statement, the per car revenue that the carriers would earn on fertilizer at the Royster scale basis is considerably less than they would earn in the handling of lumber from these points in the Ohio River cities.

Mr. Mohr: If Mr. Quirk is interested in knowing whether there are any other commodities that pay greater sums to the carriers per car than coal, he can obtain the information from the exhibits that you have filed here, can he not? There are a number of them, those bituminous asphalt rocks, is greater, it seems to me, on a casual examination of it.

"Mr. Quirk: Then, you have two greater, would you not?

"Mr. Mohr: Like lumber, you will find an additional one. And, the witness will furnish them to you, if you just ask him for them.

[fol. 469] "The Witness: I will be glad to furnish them.

"Mr. Mohr: Well, I can say as a matter of fact, it is not true, from my observation of it." (Tes. 491-93.)

My Exhibit 195 is statement in which I have shown the present rates from the Ohio River Crossings, Cincinnati, Louisville, Evansville and Cairo, and from St. Louis to Nashville and representative destinations in Montgomery and sub-territories. I have also shown the proposed rates from these crossings or gateways. Here we proposed to continue the relative adjustment as between the several crossings to Southeastern Territory. In working out the proposed rates, Louisville was taken as the pivotal point, and the rate made on basis of the distance from that Crossing. Evansville and Cairo will be made the same as Louisville to Nashville and to Montgomery and Atlanta sub-territories. To Nashville and to the Montgomery sub-territory it is proposed to make the rates from Cincinnati a differential of 55 cents per ton over the rates from Louisville, the present differential now being in most instances 56 cents per ton. To Atlanta sub-territory the rates from Cincinnati will be made the same as the rates from Louisville, which is in accordance with the usual basis for making rates to that territory. From St. Louis it is proposed to make the rates to all of this territory a differential of $1.20 per ton over the rates from the lower Ohio River Crossings. This differential is practically the same as was in effect for many years prior to General Order 28 increase, and which has since widened until it is now very much in excess of that amount. The restoration of the differential to the $1.20 figure will produce a number of reductions in the present rates from St. Louis to the Southern Territory.

Now, that is all I have, except the Commissioner asked Mr. Chadwick where we got 55 cents differential, Cincinnati over Louisville to Montgomery Territory. That started with a differential of 40 cents a ton, which was the basis for many years prior to General Order 28. With the gen-

eral increase under General Order 28 and Ex Parte 74, and then the General Reduction that has come about, that has come to be 54 cents in some instances and 56 cents in others, depending upon the way fractions were cast in [fol. 470] ironing out the fractional rates. Now, that 40 cents a ton differential, or 2 cents a hundred, represents what in the view of the carriers was a proper differential to apply Cincinnati over Louisville, to this territory to which the distance from Cincinnati was substantially 110 miles greater than from Louisville. Applying the scale literally from Cincinnati to Montgomery, Alabama, we would get a rate that is about 56 cents higher than the scale makes from Louisville. The present difference there is 54 cents, so an average of those two, and to even up is 55 cents, and that is how we got at this 55-cent differential.

There is no fertilizer manufacturing plant at Lexington, Kentucky, and there is no fertilizer shipped from that place, nor is there any fertilizer material that I know of that is shipped from Lexington, and no one will be harmed by continuing the group basis from Lexington, and no one at Lexington will be benefited by publishing rates from Lexington on basis of the scale for distances from that point. We are simply proposing to continue the present group adjustment from the Ohio River Crossings, to maintain some sort of equalization basis for the—in order to give the carriers the opportunity to compete for this traffic by the different gateways that they serve. (Tes. 493-96.)

Columbus, Georgia, is a Montgomery sub-territory; from the Ohio River Crossings it is in Montgomery sub-territory. It is on the very edge, just west of that you reach the Atlanta sub-territory—I mean just east, you reach the Atlanta sub-territory.

"Com. Eastman: Mr. Tilford, how about that?

"Mr. Tilford: You asked if Columbus, Georgia, was in Montgomery sub-territory. It is in Montgomery sub-territory, generally speaking. In working out the general adjustment in 13494, we found it necessary to put it in the Atlanta sub-territory to avoid Fourth Section violations. They also followed what the Commission did in Northbound Class Case, in Docket 1261; the Commission in that

case put it theoretically, or 15 cents on first class higher than Atlanta, and Atlanta is in Atlanta sub-territory.

"Com. Eastman: I asked, because I thought that you used Columbus as an illustration of the kind of Fourth [fol. 471] section relief you wanted on traffic from Ohio River Crossings.

"Mr. Tilford: We used Columbus and several other points to show the necessity for Fourth Section relief from the lower crossings, but I cannot remember the exact points now, but we ran into a number of Fourth Section violations in working out the adjustment from other Crossings, as against local stations on the Central of Georgia and Southern Railway, if we continued Columbus, Georgia, in Atlanta sub-territory. It was in Montgomery sub-territory. The line runs along the Central of Georgia, down the Chattahoochee River, and was the dividing line, and we broke the line a little bit different, and went through Columbus in Atlanta sub-territory. Generally speaking, of course, on that business from Cairo, it would naturally reflect the distance.

"Com. Eastman: Would not there be the same reason for doing it ordinarily on fertilizer?

"Mr. Tilford: Yes, and he has proposed it.

"The Witness: If there should develop that difference, we will of course give Columbus the adjustment which that requires us to do.

"Com. Eastman: You are proposing it in Montgomery sub-territory?

"Mr. Tilford: You are proposing Atlanta sub-territory?

"The Witness: No, sir; listed here as a Montgomery sub-territory point. It was simply taken out of the territorial directory, as that directory now carries it, and if it should properly be in Montgomery sub-territory, of course it will have that basis in Atlanta sub-territory, it would be given that adjustment, when we come to publish these rates."

By Com Eastman:

On Exhibit 159, which is a record of the Alabama Public Service Commission, I notice on page 4 it speaks of the generally favorable transportation conditions that surround the movement of fertilizer traffic. Now, was there

ny evidence in that proceeding in regard to transporta-
onal conditions surrounding the movement of fertilizer?
A. I don't recall any; no, sir."

I don't recall that the witness in that case who handled
rtilizer undertook to show that there were any different
[fol. 472] transportation conditions there than in Georgia
r North Carolina, or in any of the other States. I had
mind fertilizer adjustment, when I spoke.

As to the Louisville & Nashville finding that fertilizer
affic is a particularly expensive traffic to handle: I have
ot gone into the question of expense beyond this one fea-
ire. I conferred with our superintendent of transporta-
on, in respect to the matter of equipment, and he told me
hat as the fertilizer season approaches it is necessary for
im, or the division superintendent to accumulate at these
rtilizer manufacturing points enough empties to take
re of the outbound movement of fertilizer. That the cars
hat are made empty at those points in the ordinary day's
usiness at those stations, is not sufficient to take care of
he fertilizer movement and all of the other traffic that is
ffering at those places at the same time. He also told
he that a car that has been used for the movement of ferti-
zer cannot be used immediately for the transportation
f certain other classes of traffic, such, for instance, as
rain or flour. That it either has to be kept out of that
articularly kind of traffic, or it has to be thoroughly
lean before it can be used again. I am not prepared to
estify that fertilizer is the most expensive kind of traf-
c that we handle. I did not investigate or prepare myself
n that point.

The purpose of Exhibit 195—the last exhibit—is simply
o show what the present rates are and what the rates will
e from these points—from these Ohio River Crossings to
epresentative points in Southeastern Territory under this
roposed adjustment. (Tes. 496-501.)

It is true that completed fertilizer, or commercial ferti-
zer, does not move according to the information I have,
om these Ohio River Crossings to the destinations shown
this exhibit, but certain fertilizer materials, such as
nkage and dried blood, move from the packing centers
ound Chicago and in the north, and cyanimid from Ni-
ara Falls, and that is the kind of traffic that would move

under these rates. So far as the application, actual application of these rates is concerned, they will be found almost entirely to apply to tankage and dried blood, and cyanimid, which are fertilizer materials. In proposing this adjust-[fol. 473] ment we have taken the list of fertilizer materials just as it now appears in Note 94 Exceptions to Agent Dulaney's Classification—I have forgotten the I. C. C. number. Except that we have eliminated from that list certain items such as phosphate rock and marl, and barnyard manure, and probably one or two other items on which we are not proposing the application of the Royster scale at this time. Now, it has been deemed proper in times past to put those items in the fertilizer list, and for the purpose of this revision we are not proposing any change. I might add that according to information that I have, a great many of those items are more valuable than the so-called commercial fertilizers. I should say that the average weight on some of the fertilizer materials is greater than on the commercial or the completed fertilizer. I have no direct knowledge as to cyanimid.

In Exhibit 167 I pyramided the scale of rates said to have not been found unreasonable by the Interstate Commerce Commission in the Mount Pleasant Fertilizer Case, 50 I. C. C. 253.

"Q. On page 257 of that report it is shown that at the time of the decision, the rates in effect were substantially the same as the rates which the complainant sought. I just wanted to show you the volume, and ask if you think in the light of that fact, that the pyramid of the rates which the Commission did not find unreasonable, and which there was not any great reason at the time, more or less an academic question, so far as it would have been to have pyramided the rates which were naturally in effect, and which were voluntarily established by the railroad?

"A. It happens that I knew that the witness for the Southern Railway would make the comparisons of the rates which were in effect from Mount Pleasant to these points at the time the case was heard, and I did not make that comparison myself. I knew that there was an issue in that case, the reasonableness of the rates which were charged on the shipments which actually moved. The Commission did not condemn the rates which were charged on those shipments. They found them to be not unreasonable,

and in my exhibit I have brought those rates forward under the several increases." (Tes. 501-504.)

[fol. 474] All that was left in the case at the time the Commission decided it was the question of reparation. I think the applicant was seeking a reduction in the rates that were then in effect, as well as reparation on the shipments which actually moved at the higher rates.

Our Exhibit 195, showing rates from the Ohio River Crossings, and whether I regard the proposed rates there as reasonable for traffic originating locally at the Ohio River Cities: We are willing to apply those on traffic originating locally there; and from that standpoint I think we may say that they are reasonable rates.

They are made on the same basis of the Royster scale, from Louisville. As far as Louisville is concerned, we concede that is a reasonable rate, so far as carriers are concerned, for local movement from Louisville.

That being so, I regard it also as a reasonable rate for application to through traffic coming from beyond Louisville; it would be a reasonable charge on all traffic, of course, we realize that when 13494 is out of the way, we may be compelled to publish joint through rates from the territory north of the Ohio River into the Southeast, somewhat less than Ohio River combination. But, of course we will take care of that situation when we reach it.

"Q. Well, even if the combination basis persisted, would not it be the fair and reasonable thing to do, to publish proportional rates somewhat lower than the locals to apply on the through traffic?

"A. Well, we may find it desirable to do that at some time in the future, but we feel that even with these rates as I have shown them on my exhibit, I used, and those rates will result in reasonable total charges to Southeastern destinations."

Turning to Exhibit 164: The Louisville & Nashville Railroad scale shown on that exhibit is our local unpublished scale of the Louisville & Nashville Railroad that we have used for a great many years in determining or in measuring our rates on fertilizer between points on our own lines. It forms the basis for the rates on fertilizer, applicable between points on the Louisville & Nashville Railroad, except

where competitive conditions have compelled us to go lower, [fol. 475] or where the orders of the various State Commissions have compelled us to establish lower charges. (Tes. 504-507.)

I don't believe it is a fact that the Alabama single line scale with the standard railroads, on the average—taking into consideration the long distance rates, as well as the short distance, are fully as high as that scale. I have not made a calculation of the kind, but I wish in connection with that, you would bear this in mind, that fertilizer does not move for the extreme distances covered by our own local scale, so that when you have prescribed rates within your State very much less than the rates on basis of our local scale, for the distance within which the preponderance of the fertilizer tonnage moves, we think you have done great violence to our interests.

It is a fact that the Alabama scale beyond 220 miles is generally higher than our so-called normal scale. There are instances, of course, in which your scale is less than our local scale. Our normal scale carries carload minimum weight of 15 tons; the Alabama scale carries a carload minimum weight of 20 tons, except some few items.

We have a good many rates on fertilizer between points on our line which are less than our local scale would produce for the same distance. Taking into consideration the difference in minimum weights loaded by our fertilizer scale, and the Alabama scale, and taking into consideration the specific rates lower than our scale, which we have thereby, and which are in effect today, I certainly do say that the Alabama scale creates any substantial prejudice or discrimination against interstate traffic moving over our railroad.

I called attention to several abrupt breaks at the State line in the fertilizer scale, and stated that I did not know any justification for them.

As to what justification we would have for the break of 34 cents per ton in your scale between 15 and 20 miles; 22 cents between 25 and 30 miles; and 34 cents between 40 and 45 miles: I think for those here you should take into consideration the very short hauls that you have on the traffic, and it is right and proper for the rates to break more violently than they do after you have hauled the stuff for a greater distance than in the cases to which I have called attention.

[fol. 476] I have taken the rates applicable on the Mobile & Ohio Railroad as I found them published in the tariffs. I don't know what you mean by investigation. I know what they are—I have shown them on my exhibits.

"Q. Well, is it not a fact that the standard interstate scale applicable on the Mobile & Ohio Railroad is lower than the Alabama Commission's scale?

"A. I would not want to commit myself to that. I have not made a direct comparison of the kind to which you refer, it may be.

"Q. I was just wondering why you did not carry around the borders of the State those illustrations of discrimination. You have left off the Mobile & Ohio and the Illinois Central—what was the purpose of that?

"A. I think the reason I did that was because I did not find a fertilizer factory just a short distance across the State line.

"Q. Would you not have found the Alabama rates to be higher than the interstate rates on those railroads?

"A. I would have found some of the Alabama rates to be higher than a good many of the maximum rates, yes." (Tes. 507-510.)

I think they apply the same rates interstate as intrastate over there in a great many instances. I have filed an exhibit here showing that the scale that you prescribed last year resulted in material reductions or substantial reductions from the scale of rates which was in effect, or which it superseded. I don't know that there were numerous rates that were radically increased. I know that some rates were increased.

I have shown the rates from Nashville to all agency stations on our line between Nashville and Birmingham, and if you will refer to my Exhibit No. 169, you will find those rates set out. Now, I do not see any rate on there from Nashville to a point into Alabama that is less for a corresponding distance than from Birmingham to a station in Alabama. I did not investigate the situation on the N. C. & St. L.

I spoke about the Illinois Central and the Mobile & Ohio, and said I thought the reason why I had left those out was because I could not find a fertilizer factory near the bound-
[fol. 477] ary; the Mobile & Ohio runs from Corinth, and

Corinth is one of the points used in the case of the Southern; I used Corinth versus Decatur on the Southern Railway. The Mobile & Ohio also runs from Columbus right near the border; it gets into Columbus.

I don't recall whether there is a fertilizer factory at Columbus, or not.

There you get into that so-called Meridian territory, where of course the Alabama scale does not apply from the Alabama manufacturing points. The only point remaining would be Columbus versus some Alabama points and Corinth. Versus Alabama points, by the Mobile & Ohio, I will be glad to supply those rates.

Referring to Exhibit 165, page 6 there: My comparisons with rates on the Illinois Central Railroad there, I have used the standard line scale in Alabama in showing the Alabama scale for those distances. I did not notice that the Illinois Central Railroad had been placed in the short line category in Alabama, and accorded rates about 20 per cent higher at that time, but I recall now that that is true. For me to show that rates actually in effect in Alabama on the Illinois Central, it would represent very material increases over other existing interstate rates; but that still would not prove that you desire a reasonable scale of rates, when you gave us your table last May. I would not condemn the value of this statement just because there are a few stations in Alabama on the Illinois Central to which the rates are slightly higher than those I have shown on this particular statement.

"Q. Well, the Illinois Central is a party to the 13th Section complaint against Alabama. Would you condemn the Alabama rates as being prejudicial against the interstate rates, when they are about 30 per cent higher?

"A. I would have to work out those figures. I still think that condition would obtain." (Tes. 510-515.)

Exhibit 163: I think the proposed Disque scale is intended for both single line and joint line application and that the 9702 scale on fertilizer is divided into single line and joint line.

"Q. Is not that one of the biggest changes that Examiner Disque has proposed in those rates the merging of the two scales, with a slight increase on the average?

[fol. 478] "A. You are asking me to cover a broad territory there, and asking me if that is not one of the biggest changes he has proposed. I don't know, I have not checked out all of the changes he has proposed in his report.

"Q. I am talking about the change in the fertilizer rates.

"A. He has proposed the Class E basis for application on fertilizer in his Southwestern territory."

I don't know whether that would be the most radical change or not, but the fact remains, he has recommended an increase in the rates on fertilizer in that territory.

I do not recall that he recommended any increase on cottonseed products; he did on canned goods. He has recommended an increase on canned goods and iron and steel articles, I remember that.

Throughout my exhibits comparing the Alabama scale with the existing interstate rates, I have not given any consideration to the difference in the carload minima; I don't think that makes any difference, because average loading is now above the tariff minimum of 30,000 pounds. I don't know if it is a fact that nearly every standard line railroad operating in Alabama has a separate and distinct fertilizer scale, different from all the others; I have not made comparisons just of that kind. Some of them are the same, I have found, they have adopted the Georgia scale for application on certain portions of their lines, and where that is true, the scales of course are the same.

"Q. Is there any greater difference between the Alabama intrastate scale and the interstate scales which you have shown on these exhibits, than there is between the difference interstate scales themselves?

"A. Well, the exhibit will speak for itself, but that situation is one of the conditions that this revision will remedy or cure. I understand that not only the carriers themselves desire uniformity in the rates, but the fertilizer interests also want some uniformity."

My testimony and exhibits were directed to the rates on fertilizers and fertilizer materials. I did not specially take into consideration the rates on cottonseed products.

[fol. 479] "Q. Your exhibits would not be exactly representative of the situation on cottonseed products, would they?

"A. Well, I could not say whether they would or they would not; I have not gone into those rates specifically." (Tes. 515-517.)

Cross-examination:

I was speaking about Lexington, and its grouping with the Ohio River cities. I wouldn't say that on all northbound traffic to Official Territory that we give Lexington, for instance, a low rate; sometimes it takes the Cincinnati basis. I can't cite you any particular rate at this time where Lexington takes the Cincinnati basis northbound, but there are instances of that kind; for example, from Atlanta territory it takes the Cincinnati rate.

"Q. I am talking about traffic consigned to the Trunk Line Territory, is what I am talking about.

"A. Oh, you take the Trunk Line Territory, Lexington is on the Louisville basis, yes, sir, it is a 100 percent point."

It is on combination over Cincinnati to C. F. A. territory. I don't believe it will mean anything one way or the other to Lexington, whether we observe this grouping with Cincinnati, or whether we give it the benefit of its distance; I don't believe there will be any fertilizer shipped to Lexington, Ky., from the territory in the South from which that group basis will apply. If it wouldn't be of any benefit to Lexington it wouldn't be of any harm to the carriers. If there is a fertilizer factory erected at Lexington, and if any handicap exists in respect to that fertilizer, the carriers will give that consideration and make a change in that basis.

Fayette County, of which Lexington is the county seat, is quite a tobacco county; that is up in God's country. They don't use a lot of fertilizer in Fayette County; they don't have to use a lot of it. They use quite a bit of fertilizer in the tobacco growing section of Kentucky, but the tobacco growing section of Kentucky is not confined to Fayette County. It is not typical of the state and the tobacco growing section of the state. They don't use as much acid phosphate or complete fertilizer in Fayette [fol. 480] County as they do in some of the other counties of the State. (Tes. 518-520.)

In my exhibits I showed certain rates on coal to the Mississippi Valley. The Nashville rate for 120 miles of $1.35 is on there. I don't recall saying that those fertilizer rates in Kentucky were missionary rates, but I am willing to term them as missionary rates. I did not use a 60-cent rate on lime for 70 miles on the Illinois Central—that is ground limestone—where we charge $1.10, as a comparison to justify the fertilizer rates. I made no comparison of that kind, because ground limestone is not in this case and we do not propose any change in the limestone rates. I used crushed stone and screenings, but not ground limestone. I don't understand screenings is ground limestone; I understand the screenings are the larger pieces of stone than the ground limestone. Our scale rates are the same on ground limestone as on screenings; I don't know whether the actually published rates as they appear in the tariff are the same or not; I can't answer right here. Exhibit 183 does not include ground limestone for agricultural purposes. I had forgotten the ground limestone rates were in there; we do make special rates on ground limestone for agricultural purposes in Kentucky; that action was taken at the suggestion of the Kentucky legislature some years ago. I don't think we complied with that suggestion in its entirety; I don't think we went as far as they wanted us to go. The Commission, so far as I know, has never prescribed a mileage scale for application on fertilizer in Kentucky; I can't answer here if they prescribed or fixed specific rates; so far as answering for the L. & N., it has never been done. (Tes. 520-523.)

That scale I have shown on fertilizer is quite an old scale, taking the percentage increases and decreases.

Referring to exhibit showing rates on fertilizer from Tupelo, Miss., and Birmingham, Ala., to Frisco stations between those cities, and as to whether the disparity between these rates is not due to the state-made rates in Mississippi: It is my understanding that the rates applicable in Mississippi generally are state-made rates. I base that on information I received from officials of lines operating in the state of Mississippi. I have never seen any record of an [for. 481] order of the Mississippi Commission that would justify that statement. It came to me in such a way as to lead me to believe that no investigation on my part was necessary to confirm it. The L. & N. does not keep a chrono-

logical history or record of practically all of their rates so that they can go right back to the first rate they had on a commodity; we introduce such statements but they are compiled for each and every case; almost naturally when we do make a chronological statement of a rate, we preserve that for future use, but in practically every case I have had to prepare in which a chronology was necessary, it had to be worked up from the beginning. So far as this question of state-made rates in Mississippi is concerned, I have no personal knowledge; I have only the information given to me from time to time by officials of other roads operating in Mississippi. I would have to rely on the testimony given by Mr. Sheppard in that state, who testified from the records of his railroad, and I think he also referred to a report of the Mississippi Commission.

My information is that the average value of ground limestone used for agricultural purposes is about $1.75 a ton; I recall some time ago, if I may say this, speaking to a railroad man who bought some for application on his farm, he told me he paid $1.50 a ton. I think generally throughout Southern Territory the rates on ground limestone are on a lower basis that the rates on fertilizer. I am not a farmer but I understand that ground limestone is used to put on sour land to sweeten the soil. I can't answer whether the application of lime to the soil requires from a ton to three tons an acre. (Tes. 523-525.)

By Mr. Quirk:

"Q. Mr. Cotterill is not here, and one of the commercial fertilizer concerns asked me to ask this question, who are directly interested in fertilizer material. Mr. Drescher, did you say that on the movement of fertilizer material from Chattanooga, for instance, into Alabama, that the fertilizer concerns at Chattanooga had difficulty in selling in Alabama as compared with Decatur, because of the difference of about fifty cents in the freight rate?

[fol. 482] "A. Well, if the freight rates would mean anything in the selling of fertilizer, it seems to me that Chattanooga would have some difficulty in selling it at those Alabama points, in comparison with Decatur. I think I called attention to the rate from Decatur to Scottsboro, 66 miles, where the rate is $1.65, and to the same point from

Chattanooga, for 56 miles, the rate is $2.10; there is a difference of about 45 cents a ton in the rate."

It seems to me that in overcoming a difference in freight rates at a particular destination, the fertilizer factory would be handicapped to the extent of the difference in freight rates; now, whether or not that would mean anything to the farmer is another question. My own opinion is that when you get down to the farmer and the application of the fertilizer to the soil, the difference in the freight rates doesn't mean a great deal.

It is our proposal to apply the minimum weights in connection with each of the items in the fertilizer list, as shown in Mr. Menzies' exhibit No. 8, I think it is, and not the 30,000 pounds minimum throughout.

The basis proposed from the Ohio River crossings is to continue the present rate from Louisville to Jacksonville, either as a proportional rate or as a basing rate to be used in constructing through rates to points in Florida south of the River Junction-Jacksonville line; from the other crossings, it is proposed to use the relative adjustment to which I have referred in my testimony as being applicable to the Atlanta Territory. The carriers are not proposing the present rates from all the Ohio River crossings to Jacksonville, but the present rate from Louisville, with relationship of the other crossings to Louisville that will obtain to Atlanta and other points in Atlanta subterritory, as I have explained. (Tes. 525-528.)

(Witness excused.)

[fol. 483] F. D. McConnell was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination:

I am connected with the Central of Georgia Railway as General Freight Agent, located at Savannah, Ga.

I have been in the traffic department of the Central of Georgia Railway since December, 1897, continuously, except during the period of Federal Control, when I was with the United States Railroad Administration. My testimony

in this case will relate particularly to the interstate and intrastate rates in the state of Georgia. And in view of the fact that the carriers general position in this case has already been covered by other witnesses, I will very briefly refer to the intrastate rates in Georgia, and file some exhibits in support of the carriers' Thirteenth Section Application in connection with those rates. I will endeavor just as far as possible not to duplicate anything that has been previously submitted. Outlining briefly the history of the intrastate rates on fertilizer and fertilizer materials in the state of Georgia: The Railroad Commission of Georgia issued its first tariff effective May 1st, 1880, in which they prescribed Class K rates any-quantity on fertilizers. This scale began at one dollar for 10 miles, and extended in 10 mile blocks up to 350 miles; the rate for 50 miles being $1.60; for 100 miles $2.00; for 150 miles, $2.20; for 200 miles, $2.80; for 250 miles, $3.00; for 300 miles, $3.20; and for 350 miles $3.40, per ton of 2,000 pounds. By Circular No. 19, effective January 1st, 1882, the classification of fertilizer in Georgia was changed from Class K any-quantity, to Class K plus 20 percent, any-quantity. In referring to this change, in its report submitted October 4th, 1882, the Commission said:

"After a trial, covering a period of several months, the Commission believed that their standard rate for transportation of manufactured fertilizers was, at that time, too low. This resulted from the great expense to the railroads, consequent upon storage, detention of cars, etc. In view of this, the Commission concluded to temporarily advance the rates on fertilizers, and accordingly issued said circular."

[fol. 484] The next change was made effective January 1st, 1884, by circular No. 42, when the classification of fertilizer, carloads, was changed to Class "M," plus 20 per cent, carload minimum weight 20,000 pounds, and the former any-quantity rating being continued on less than carload traffic. This change reduced the carload rates for distances up to 80 miles in amounts varying from 4 cents to 28 cents per ton under the rates originally established in 1880, and from 24 to 68 cents per ton under the rates established in 1882. For distances over 80 miles the rates established in 1884 were slightly higher than those established in

1880, and somewhat lower than those established in 1882. (Tes. 528-530.)

In other words, although the Georgia Commission found and stated in 1882, that it had concluded that its fertilizer rates prior to that period were too low, and authorized some advances, nevertheless two years later or in 1884, the Commission reduced the rates in many cases to a level even lower than those in effect prior to 1882. While the rating of Class "M" plus 20 percent was in effect, the Georgia Commission issued its Circular No. 118 effective September 15th, 1888, and for distances below 100 miles divided the scale into five mile blocks in lieu of the ten mile blocks, continuing the former rates for the even ten miles distances and reducing the rates for the intermediate five mile blocks.

The Commission, in its report dated November 1st, 1888, in speaking of the increased prosperity of the State, comments as follows:

"We think we may justly say that the Railroad Commission has, in some degree, contributed to this great result. We have, to the best of our ability, administered the wise law of the State impartially, in a spirit of conservation, and with due regard to the rights and interest of all. Our action hastened, we believe, to increase travel and business on the railroads, to promote confidence, to bring about a better feeling between the roads and the people, and to secure stability in rates—and has thus benefited the roads. We have prescribed low fares for travel, that great educator—low rates for naval stores, for lumber, for all articles manufactured in the State and the raw material used in their [fol. 485] manufacture, for cotton and other agricultural products, for provisions and fertilizers, and for the articles that enter into the daily wants of the people. We have thus endeavored to promote the railroad, the manufacturing, the agricultural, the commercial and all the business interests of the State."

That was on November 1st, 1888.

By circular No. 162, effective January 15, 1890, fertilizer, carloads, was reduced from Class "M," plus 20 percent, to Class "M," without percentage, resulting in a reduction of 16⅔ percent.

Effective November 15th, 1890, a slight increase was brought about in the rates for distances 300 miles and over

by reason of a change in Class "M" rates. It is not clear from the record whether this was intentional, as it appears that it may have been the result of an error in transposing the Class "L" rates and Class "M" rates for distances 300 miles and over.

Effective October 15th, 1890, by Circular 171, the Commission prescribed a rule for constructing joint rates, which provided for the use of 90 percent of the local rates.

Effective July 20th, 1893, by Circular No. 228, certain short lines were allowed to add 10 percent to the Class "M" rates.

The final change was made effective January 1st, 1897, by circular No. 267, when rates were prescribed for all railroads in the State on basis of Class "M," less 10 percent. In referring to this change, the Commission, in its report submitted October 15th, 1897, said:

"All percentages above Standard Tariff were removed from fertilizers, and the rates made Class M less 10 percent, and Class K less 10 percent in carloads and less carloads, respectively, making an average reduction of the rates on fertilizers in this state of about 18 percent. The rates on cainit and cottonseed meal were reduced the same as those on fertilizers, or about 18 percent.

"The above enumerated reductions in rates (there being a number of other articles included) on the different commodities, when taken in the aggregate, make a heavy reduction in the revenues of the roads. While it is the policy [fol. 486] of the Commission to give to the people as low rates as can be made with justice to the roads, and while the board is impressed with the fact that there are other commodities which seem to be heavily burdened, the Board has declined to grant reductions in a number of cases, stating that they could not justly make further general and material reductions in the revenues of the roads at this time; as some lines are now failing to pay their operating expenses and fixed charges under the rates at present allowed, while a large majority of them barely earn sufficient revenue to pay cost of operation and fixed charges. Under present conditions, any considerable reduction of the income of the roads would place many of them in circumstances likely to terminate in receivership."

By Circular No. 268, effective January 26th, fertilizer was exempted from the rule requiring the use of 90 percent of the local rates in constructing joint rates. (Tes. 531-534.)

Subject to the percentage increases under General Order No. 28 and Ex Parte 74, and the 10 percent reduction under "Reduced Rates 1922", the rates prescribed by the Railroad Commission of Georgia effective January 1st, 1897, are still in effect as maximum rates within the state of Georgia.

The low scale of rates which has been in effect on fertilizer in Georgia during the past 45 years has had its effect on fertilizer rates within other Southern states, as well as on interstate rates. On November 1st, 1888, the Railroad Commission announced that it had prescribed rates which in its judgment would promote the railroad, the manufacturing, agricultural, commercial, and all business interests of the state; and it was under those rates thus prescribed in 1888, or substantially those rates that in 1897 the Railroad Commission found and stated in its report of that later date, that the majority of the railroads in the State of Georgia were threatened with bankruptcy. Following the statement that was made in 1888, the fertilizer rates were reduced first 10 percent and then approximately 18 percent. The anticipation of the Commission as to their rates promoting the railroad and agricultural interest of the state were apparently not realized so far as the rail-[fol. 487] roads were concerned; they say they came pretty near ruining them.

By Commissioner Eastman:

"Q. Well now, does that follow? What proportion of the business is intrastate, and what proportion of the revenue of those railroads was received from intrastate business?

"A. Well, I couldn't answer that, because we have got no information as to that."

I don't think it could be wholly attributable to the reduction in rates; probably at that time there was a depression all over—I don't think it is true as to all roads that at that time a lesser part of the revenue of the Georgia railroads came from intrastate traffic; some of them, I

think the bulk of their traffic would be intrastate, while others it would be interstate. So far as the larger roads, and the more important roads were concerned, the bulk would be interstate. During the period of which I am speaking, there was effective control over interstate rates by the Interstate Commerce Commission.

"Q. Between 1888 and 1897?

"A. Of course, the Commission did not fix, the Interstate Commerce Commission did not fix the rates, the carriers—no, I think I am wrong about that, I don't think the Interstate Commerce Commission prior to that time fixed any rates for the carriers, I think they merely recommended."

They had no power to fix a rate for the future at that time. (Tes. 534-36.)

As a matter of fact in that early period, the majority of the railroads in Georgia were small lines; there have been some consolidations since that time, some lines have acquired other lines. Some of the lines were large, the Central of Georgia, of course, has acquired other lines in the state of Georgia since that time. The fact that they were small would not prevent them from carrying interstate traffic—not a bit. I pointed out that regardless of what was said by the Georgia Commission in its Circular of Jan-
[fol. 488] uary 1st, 1897, at that time the Class M rates then in effect were still further reduced 10 percent. By an order of July 14th, 1921, the Georgia Commission required the carriers in Georgia to submit to it a scale of class and commodity rates for single and joint haul application that would remove the discrimination found to exist. In response to that order, the Georgia carriers on September 26th, 1921, submitted to the Georgia Commission class and commodity mileage scales, including mileage scales on fertilizer, and subsequently the Commission held hearings on these mileage scales, and on October 24th, 1923, the Commission submitted to the carriers and shippers, tentative mileage scales on fertilizer, and asked that on November 26th, 1923, interested parties appear before the Commission and submit criticisms of the mileage scales. Accordingly, representatives of the carriers appeared before the Commission on November 26th, 1924, and asked the Commission not to adopt the scale which it had tentatively proposed,

but in lieu thereof to approve the rates less 10 percent submitted by the carriers on September 26th, 1921. On September 26th, 1924, the Commission issued an order prescribing mileage scale rates on fertilizer between points in Georgia to become effective November 15th, 1924. The mileage scale prescribed in that order was substantially less than the mileage scale tentatively suggested by the Commission for criticism. In compliance with the Commission's Order of December 26th, 1924, the reduced rates on fertilizer were published to become effective November 15th, 1924. Certain of the Georgia carriers appealed to the Federal Court for an injunction against the Georgia Commission, and the case was heard before Judges King, Clayton and Sibley in Atlanta on November 26th, 1924, and on that date the Federal Court enjoined the order of the Georgia Commission that had reduced the rates effective November 15th, 1924. The scale of rates covered by that order, that was in effect from November 15 until November 26th, is a part of the Thirteenth Section Petition dated November 16th, 1924. (Tes. 538-540.)

I have read the original petition and the amended petition filed by the carriers under Section 13 of the Act, and I will state that the allegations of fact therein contained are true to the best of my knowledge and belief.

[fol. 439] I have prepared also a series of exhibits which I desire to offer in evidence in this record.

(The statements were thereupon received in evidence and marked "Carriers' Exhibits Nos. 196 to 206 inclusive.")

(The original petition filed on behalf of the Georgia carriers under Section 13 of the Act, dated November 16th, 1924, was received as Exhibit 207.)

(An amendment to the petition on behalf of the Georgia carriers, dated December 8th, 1924, was received and marked Exhibit No. 208.)

On December 11th, 1924, the Georgia Public Service Commission withdrew its order of September 26th, and it was thereupon that the carriers filed their amendment to the Thirteenth Section Application; it was to acquaint the Commission with what had developed subsequent to the filing of the first petition. That is why we amended that Thirteenth Section Application.

The rates that the carriers had proposed to the Georgia Public Service Commission were nothing more than the same scale that had been submitted to the Alabama Public Service Commission, as explained by Witness Drescher, that was substantially the Royster Scale, but not identically that scale, because the scale was built to end in 0, and 5 units. The carriers on September 30th, 1924, filed a petition with the Georgia Public Service Commission, and submitted in lieu of the scale submitted in 1921, the exact Royster Scale, asking the Commission to approve that scale, stating that the carriers had decided to proceed with the general revision of the rates on fertilizer and fertilizer materials between points in Southern Territory on the basis of the so-called Royster Scale for single and joint line hauls, as that scale had been prescribed by the Interstate Commerce Commission in several cases. Now, that brings us, as far as the Georgia Rates are concerned, to a brief outline of the history of those rates today. To illustrate the successive reductions that were from time to time made, by giving reference to the scales as in effect in Georgia for given periods: For 10 miles on May 1st, 1880, the rate was one dollar; on January 1st, 1882, $1.20; on January 1st, 1884, 96 cents; on January 15th, 1890, 80 cents; on January 1st, 1897, 72 cents. For 50 miles, in 1880 the rate was $1.60; [fol. 490] in 1882, $2.00; in 1884, $1.44; in 1890, $1.20; in 1897, $1.08. For 100 miles, in 1880, the rate was $2.00; in 1882, $2.40; in 1884, $2.04; in 1890, $1.70; in 1897, $1.53. I think that is illustrative.

In other words, if you start at 5 miles, it is a fact that the rates made effective in 1897 were exactly one-half of the rates that were in effect in 1880, and if you get up to the higher distances, for example 50 miles, your rate in 1897 was 52 cents less than in 1880, and so on. (Tes. 540-44.)

The Railroad Commission of Georgia was one of the earliest Railroad Commissions that began to function in the Southern States. I have heard the testimony of previous witnesses as to the effect that the rates thus established at an early date by the Railroad Commission of Georgia had upon the rates established in other states of the South, notably Alabama. In other words, it was these rates fixed by the Railroad Commission of Georgia in 1897 that were adopted thereafter and prescribed in Alabama in connec-

tion with what is commonly known as the 110 Commodity Scale in that state; in 1907, the state of Alabama adopted the exact Georgia rates on fertilizer.

"Q. Is there any doubt about the fact, as has been stated by other witnesses, that the low rates prescribed in Georgia had an effect also upon the rates prescribed in other states, such as South Carolina?

"A. While the Central does not operate in South Carolina, records which I have examined show that the Georgia Rates have influenced the rates in fifteen states.

"Mr. Gwathmey: And that has been covered.

By Mr. Perry:

"Q. What have you in the record to bring you to that conclusion?

"A. I got that information from the brief filed with the Georgia Public Service Commission.

"Mr. Perry: As a matter of fact, everybody knows in Georgia, if Mr. McConnell does not, that that was just the coincidental political upheaval in Alabama, that resulted, and they found what they thought was satisfactory in the Georgia scale."

[fol. 491] "Mr. Perry: My question further is, you take it for granted that because the rates were lowered in Alabama and in South Carolina, that the action of the Georgia Commission some years previous was responsible for it?

"A. Well, the rates established by the Legislature of Alabama in 1907 on Fertilizer, the exact figures, were identical with the Georgia rates."

That is all I have; and I do not, based on that, say the action of the Georgia Commission was responsible for the trouble we have had; I say Alabama adopted the same rates as were in effect in Georgia.

"Q. But you stated the Georgia action had its influence in those other states; now, is that correct?

"A. No, the result was, though, that they got the same rates."

I think the other states just said: "Well, Georgia has these rates, and we ought to do as much for them as Georgia."

"Q. Might it not be just as easy inferred that the rate war that you had on many years before had its final reflective influence in Alabama?

"A. They didn't have any rate wars just immediately preceding 1907." (Tes. 545-547.)

To show the measure of the rates on fertilizer between points in Georgia, as contrasted with the interstate rates, my Exhibit No. 196 shows rates from Savannah to 33 stations on the Central of Georgia Railway in Georgia, for distances ranging from 22 to 245 miles, contrasted with the present and proposed rates from Savannah to stations on the Southern Railway in South Carolina for similar hauls. The Central of Georgia Railway extends out of Savannah into Georgia in a northwesterly direction, while the Southern Railway extends out of Savannah into South Carolina in a northeasterly direction. This exhibit shows that the present rates from Savannah to Georgia points are in every instance less than the rates from Savannah to South Carolina points for corresponding distances; that the carriers' proposed scale results in increasing the present rates from Savannah to Georgia points in amounts ranging from 11 to 45 cents per ton, while the carriers' proposed scale would [fol. 492] reduce the rates from Savannah to South Carolina points by varying amounts up to 45 cents per ton.

Exhibit No. 197 shows the present and proposed rates from Savannah to 20 stations on the Seaboard Air Line Railway in Georgia for distances ranging from 82 to 257 miles, contrasted with the present and proposed rates from Montgomery, Ala., to 20 stations on the Seaboard Air Line Railway in Georgia. The Seaboard Air Line Railway extends from Savannah to Montgomery, the distance from Montgomery to the Georgia State line being approximately 80 miles. This exhibit shows that the present rates from Savannah are in every instance less than the rates from Montgomery for similar hauls, and that the carriers' proposed adjustment would result in increasing the rates from Savannah in amounts ranging from 11 to 45 cents, while from Montgomery the carriers' proposed scale would re-

duce the rates in amounts ranging from 33 to 56 cents per ton. Those are domestic rates out of Savannah. We have import rates only to fertilizer manufacturing points. I don't think they would be lower to any of these points, because Savannah would be the key port in fixing the import rates. In fact, I don't think there are any import rates from Savannah to any of these points named here, because they are not fertilizer manufacturing points. (Tes. 547-549.)

Exhibit No. 198 shows the present and proposed rates from Augusta, Ga., to 27 stations on the Georgia Railroad in Georgia, contrasted with the rates from Augusta to 27 stations on the Southern Railway in South Carolina for distances ranging from 5 to 171 miles. It will be noted that the present rates from Augusta to Georgia points are in every instance less than the rates from Augusta to South Carolina points for similar hauls; that the rates which the carriers propose would increase the rates to Georgia points in amounts ranging from 11 to 45 cents per ton, while to South Carolina points, with the exception of Warrenville, the carriers' proposed scale would result in numerous reductions ranging in amounts up to 45 cents per ton. The Georgia Railroad extends from Augusta westwardly, while the Southern Railway extends east from Augusta.

Exhibit No. 199 shows the rates from Macon, Ga., to 14 stations on the Central of Georgia Railway for distances [fol. 493] ranging from 102 to 237 miles, compared with rates from Macon to 14 stations on the Central of Georgia Railway in Alabama for similar distances. The distance from Macon to Alabama-Georgia state line on the Central is 100 miles. This exhibit shows that the intrastate rates are in every instance lower than the interstate rates for similar hauls; that the carriers' proposed adjustment would increase the intrastate rates in amounts ranging from 11 to 34 cents per ton, and reduce the interstate rates in varying amounts up to 45 cents per ton.

Exhibit No. 200 shows the present and proposed rates from Columbus, Ga., to 24 stations on the Central of Georgia Railway in Georgia for distances ranging from 4 to 145 miles, compared with rates from Columbus, Ga., to 24 stations on the Central of Georgia Railway in Alabama for similar distances. This exhibit shows that the level of the interstate rates is higher than the intrastate rates, and that

under the carriers' proposed adjustment, the intrastate rates would be increased from 11 to 45 cents per ton, while the interstate rates would in the majority of cases be reduced by varying amounts up to 23 cents per ton, and in only one instance would there be any increase.

Exhibit No. 201 shows the present and proposed rates from Atlanta to 19 stations on the Central of Georgia Railway in Georgia, compared with the rates from Birmingham to 19 stations on the Seaboard Air Line Railway in Georgia, for distances ranging from 96 to 275 miles. It will be noted that, except in the case of from Birmingham to Atlanta, which is a subnormal rate, the interstate rates are substantially higher than the intrastate rates; that the carriers' proposed adjustment would increase the intrastate rates in amounts ranging from 11 to 45 cents per ton, and would reduce the interstate rates in some instances as much as 56 cents per ton.

Exhibit No. 202 shows rates from Atlanta to 25 stations on the Southern Railway in Georgia, compared with the rates from Atlanta to 25 stations on the Southern Railway in Alabama.

Exhibit No. 203 shows rates from Albany to 26 stations on the Atlantic Coast Line Railroad in Georgia, compared with rates from Dothan, Ala., to 26 stations on the Atlantic Coast Line Railroad in Georgia, for distances ranging from [fol. 494] 23 to 199 miles; the intrastate rates are in every instance less than the interstate rates, and the carriers' proposed scale would increase the intrastate rates in amounts ranging from 11 to 45 cents per ton, and reduce the interstate rates by varying amounts from 11 to 56 cents per ton.

Exhibit No. 204 shows intrastate rates compared with interstate rates to a destination that is midway between two fertilizer manufacturing points, one being in Georgia and the other in another state. This exhibit shows that to Hamby, Ga., which is a point on the Central of Georgia Railway between Rome and Chattanooga, the carriers' proposed adjustment is the same as the present rate from Chattanooga; that the rate from Rome is 34 cents per ton less than is the rate from Chattanooga for the same haul. (Tes. 550-552.)

I mean the present intrastate rate from Rome. Now, Bancroft, Ga., that is a station on the Central that is midway

between Albany and Dothan, with fertilizer plants at both Albany and Dothan. The exhibit speaks for itself. Those are rates from fertilizer manufacturing points; every point of origin is a fertilizer manufacturing point. They show the disadvantage under which the interstate shipper is laboring at the present time, as compared with the intrastate shipper, and show also what the carriers' proposed rates will be both interstate and intrastate.

The scale applicable in Georgia on intrastate traffic has — filed by previous witnesses, and I will not file or duplicate by another exhibit. In Georgia, there is no mileage scale for joint line application on fertilizer; the mileage scale applies for single line hauls, and for joint line hauls the rates are made on combination. Now, to show the effect of the carriers' proposed joint line mileage scale as to the present combination rates, my Exhibit No. 205 shows the joint haul rates over two lines, computed on the available combination hauls in multiples of 5 up to 150 miles, and in multiples of 10 for distances over 150 miles; then the carriers' proposed joint line scale for the total distance of the haul.

Exhibit No. 206 is a companion exhibit, which shows the maximum and minimum rates in Georgia for joint hauls over two lines, compared with the proposed joint line mileage scale. Those are all the exhibits that I had.

[fol. 495] "Q. Now, Mr. McConnell, please state whether or not the interstate shippers of fertilizer under the various interstate rates which you have shown in this exhibit come into direct and actual competition with those who ship under intrastate rates?

"A. No, sir they must——"

There is no such dissimilarity in the transportation or circumstances and conditions surrounding the handling of intrastate traffic on the one hand as compared with interstate traffic on the other that in my opinion would justify a difference in rates; I know of no transportation condition that warrants a different rate when a state line is crossed. The Central of Georgia is rather an important road in Georgia; the percentage of the total tonnage of the Central of Georgia Railway Company that is composed of fertilizer is 3.12. That does not include materials.